

6 house. I've never once seen him drinking. And  
7 generally, he worked in the nighttime, because he works  
8 during the daytime. And it's been are a very long  
9 process, but hopefully it's almost done.

10 I question -- in the house, the number 18,  
11 happens to be in the same model as mine, and I question  
12 how they can have six bedrooms, because that's a  
13 four-bedroom house. Some of the other houses that  
14 have -- were either four or five bedrooms and now have  
15 six bedrooms in them, how did they -- did they get the  
16 permits to redo these houses, which they obviously must  
17 have? I really question whether they legally can  
18 converted these homes to six bedrooms.

19 And to have the number of people living in  
20 these homes definitely impacts our neighborhood and  
21 actually has caused many problems with the neighborhood  
22 that we have. And I don't think I have too much else to  
23 say.

24 Thank you.

25 Oh, I do have one question. What is Oxford

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1 Charter homes? The attorney referred to that like that  
2 was some great wonderful thing.

3 MR. ALLEN: We'll have them respond to that  
4 when they wrap. Thank you.

5 MS. LEE: Thank you.

6 MR. ALLEN: Anyone else?

7 MS. GROSKREUTZ: Good afternoon. My name is  
8 Victoria Groskreutz, G-r-o-s-k-r-e-u-t-z, and I live at  
9 1551 Pegasus.

10 I would have to say ditto to the other comments  
11 that have been made. I've submitted quite a few pictures  
12 that I've taken myself to the City, and I've submitted  
13 those through Dave Kiff. And they clearly show, and I  
14 have some here, that the trash is overflowing. And  
15 there's toilet seats sitting in the street and old  
16 furniture that sits for days before being picked up.

17 MR. KIFF: Ma'am, I'm sorry to interrupt you.

18 I looked at those pictures, too, and it was my  
19 understanding that those were 1501 or 1502 Pegasus; is  
20 that right?

21 MS. GROSKREUTZ: That's correct.

22 MR. KIFF: Okay. Because that's not the  
23 subject of the hearing today, but -- so in other words, I  
24 can't submit them as evidence, because they are not the  
25 subject properties. Those are the Lynn House properties.

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1 MS. GROSKREUTZ: They are now. But in the  
2 past, they were Yellowstone.

3 MR. KIFF: Okay.

4 MS. GROSKREUTZ: And the property directly -- I  
5 live across the street from Mike McDonough, and he said  
6 he could see three homes. And there are actually the two  
7 homes that were occupied at 1501 and 1502, but the house

8 two doors down from me. I'm in the middle of the block.  
9 And then, of course, the other one on Redlands, I  
10 believe, it is. That are all very close in proximity.

11 we, too, have had these issues with the  
12 parking. We've had cars parked in front of our driveway.  
13 we haven't even been able to put out our trash cans  
14 because your cars have been parked there.

15 Bi-weekly meetings for the residents but other  
16 people come in with lots of cars have occurred. And I've  
17 always questioned why they don't have their meetings at  
18 churches or other community locations where there's  
19 adequate parking, but this may be on deaf ears. This  
20 seriously impacts the parking on the street.

21 We've also had cars that have been left on our  
22 streets for days full of trash and junk that just sit  
23 there. I've had to call on those also.

24 I also have had to -- I've actually gone out to  
25 follow -- when I see people getting out of cars, I have

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1 something else reported. I've watched to see where they  
2 go, and they go down to the houses and enter them. And  
3 they do park sometimes a block away. I don't know if  
4 they don't want their cars noticed, but they park far  
5 away, and they are walking to the home.

6 So I feel like our tract is becoming a parking  
7 lot for sober living homes. When our own family and  
8 friends come over, we, too, have had to park a car out

9 front to save a space for them to park when they come  
10 home from work or when they come to visit.

11 when the attorney suggested that they actually  
12 have -- or stated in the past that was sold on public  
13 auction, there were other families members bidding on  
14 that property, but they are outbid by Yellowstone. One  
15 of the families was a young man and his wife and child  
16 that wanted to buy that house, and he was actually raised  
17 in that neighborhood. So it was very disheartening to us  
18 to see that happen.

19 We recently applied for refinancing for our  
20 home that would have considerably reduced our monthly  
21 mortgage, but we were told that the last comparable sale,  
22 which I believe was the 1502 house, which was a sober  
23 living facility, impacted that -- the value of the home,  
24 and so it wouldn't go through as a comparable sale that  
25 was high enough.

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1 Realtors have told us that they have to inform  
2 prospective buyers that there's sober living homes in the  
3 tract. This also affects our property values and the  
4 character of our neighborhood.

5 And I, too, am concerned about the recent  
6 explosions of trash that have been left on our property.  
7 I can't figure out why, but there's also been a plant  
8 that's been knocked over.

9 Another concern was when there were --



10 MR. ALLEN: Can you please put a wrap on it?

11 You're past your three minutes.

12 MS. GROSKREUTZ: Okay. This is the last thing  
13 I wanted to say. The two homes at 1501 and 1502, often  
14 had women in their pajamas crossing back and forth across  
15 the street all hours of the night and day. When you make  
16 a right turn into the neighborhood, you have to be very  
17 cautious, because you can actually hit somebody crossing  
18 the street, because there's this constant flow.

19 We also had at least six times that the fire  
20 department had to respond to 1501 because of detox that  
21 was going on, which we understood was not licensed. And  
22 I would like to know if there's any records from the fire  
23 department that support that.

24 Thank you. I respectfully ask you to deny the  
25 request of the application.

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1 MR. ALLEN: Okay. I don't see anybody else  
2 coming forward, and we aren't going to close the public  
3 hearing yet. And I'm suggesting -- and if staff wants to  
4 comment, please do -- that we open the hearing and  
5 initially attempted to focus on 1621 Indus, but then we  
6 transitioned, and everybody just started talking. And I  
7 think that's just fine, because you all got to say your  
8 peace.

9 Here's my thinking, unless I hear vehement  
10 objection from staff or even the Applicant, that if any

11 of you have something specific, site specific, to one of  
12 these particular properties that you didn't get to say  
13 that you feel compelled and you need to say in order to  
14 complete your presentation, I'd suggest you come back,  
15 and I'll give you a minute, minute and a half, to focus  
16 in on a compelling issue that you don't think has been  
17 presented.

18 Now, obviously, all of the neighborhood issues  
19 and the concerns that are neighborhood-wide have been  
20 expressed articulately and repeatedly. But please do.  
21 If you feel you need to focus on one of these particular  
22 properties, go ahead and do it.

23 MR. HANLEY: 1621?

24 THE REPORTER: Name again?

25 MR. HANLEY: Robert Hanley.

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1 THE REPORTER: Thank you.

2 MR. HANLEY: What I'm about to say about that  
3 house is about all of them. There's no car parked in the  
4 garages. The garages are full of beds and such. So the  
5 statement that they accommodate their own parking is  
6 false.

7 I was told by one of the participants that she  
8 could not park in the driveway because it was reserved  
9 for whoever. She had to park at the curb. I made  
10 certain statements about the amount of parking, hydrant,  
11 and what have you. I videoed all this. And if I knew

12 that would be something that would be credited, I would  
13 have brought it.

14 I have an argument with the whole concept in  
15 them being called medically a disability. There are  
16 people with disabilities that are alcoholics. But I'll  
17 be damned if an alcoholic is a disabled person.

18 MR. ALLEN: Thank you.

19 Mr. Robertson needs to focus -- and again, we  
20 don't need general comments. That's not what the purpose  
21 of revisiting. This is a focus on an individual one,  
22 where you see something good or bad about it that you  
23 feel has not been said.

24 MR. GROSKREUTZ: Chuck Groskreutz, 1551 Pegasus  
25 Street.

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1 Just wanted to ask about the 1571 Pegasus,  
2 20172 Pegasus (sic), 1621 and the other address, which I  
3 didn't write down. Each one of these show  
4 bedrooms -- six bedrooms, six bedrooms, six bedrooms,  
5 five bedrooms now. And I want to know or would like to  
6 know whether they were -- when they were purchased,  
7 whether they were added, whether the bedrooms were added,  
8 and if so, if the permits were pulled, because I'm not  
9 sure. I don't know. It's my only comment.

10 THE COURT: There's been a question that's been  
11 raised by several people, and I expect staff can address  
12 it, and then we'll deal with it from there. Thanks.

13 MR. GROSKREUTZ: Thank you very much for the  
14 second opportunity.

15 MR. ROBERTSON: George Robertson, 20112  
16 Redlands Drive. My one point is in regards to 20172  
17 Redlands Drive, and by extension, 1621 Indus.

18 One of the findings under the Section  
19 20.91A.060(A) through (G) was that no secondhand smoke  
20 can be detected outside the property. Staff has found  
21 that this is the case.

22 I feel that finding cannot be made for two  
23 reasons. We've already heard one person today talk about  
24 being able to smell secondhand smoke from the Redlands  
25 facility. Plus, I've personally have seen people smoke

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1 in the front yards of those two residences, both on  
2 Redlands and then on also on Pegasus.

3 In addition, if you're to go by those  
4 residences, you would find cigarette butts in the gutters  
5 in front of those. And whether those were residents or  
6 guests, I can't say. But my assumption is that guests  
7 should also be following the guidelines as residents.

8 Thank you very much.

9 MS. LEE: I'm Louise Lee.

10 And in his original presentation, he made a  
11 comment about how Yellowstone had come in and upgraded  
12 all of the homes. And I personally have watched from the  
13 time they came in and bought them. And, yes, they put

14 paint, and they did a bunch of fixing up, et cetera.

15 But now you walk around -- and in particular,  
16 let's see, which one is it? It's 1621, I believe, Indus.  
17 The one that's in the middle of that, at the end of the  
18 curve, the driveway is breaking down. There's paint  
19 peeling off of the houses. The one that's on 1571 on  
20 Pegasus, the same situation.

21 So the homes, in fact, all of them, have been  
22 allowed to deteriorate, which also directly effects the  
23 way our neighborhood looks and the values of our  
24 neighborhood and the general feeling of the neighborhood.  
25 So they have not done a good job on keeping the

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1 facilities looking nice. They have really allowed them  
2 to deteriorate.

3 MS. BOSLEY: I'm Rita Bosley. 1632 Indus  
4 Street. I live right across the street from 1621.

5 And my neighbor across the street and the  
6 neighbor to this property is not here represented, and I  
7 feel I need to represent her. She has asked the property  
8 people to go in on a fence with her, and they refuse to  
9 do so. The fence is falling down, and she needs  
10 cooperation. I'm not sure if she knows who to ask,  
11 whether she just asked the people at the house, but she  
12 has not gotten any cooperation with them.

13 I also see very big groups of people coming in  
14 for meetings on Friday mornings at 10 o'clock. And we

15 were told that that was not going to happen. They come  
16 in, and they get into their vans, and people are walking  
17 down the street.

18 There are many, many people that walk down the  
19 street not only in the van being delivered but they walk  
20 from other buildings, and so it's like a gang. We have  
21 just lots and lots of people walking through there, not  
22 really paying any attention to anyone else, or being  
23 inconsiderate, just walking as a big group.

24 Also, on 1571 Pegasus, I just took a walk  
25 around this morning, and between 1571 and Santa Ana

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1 Avenue, there were over 25 cigarette butts just sitting  
2 in the street. That's trash, and that effects our  
3 neighborhood.

4 Thank you.

5 MR. ALLEN: Thank you.

6 Anyone else want to focus on a particular  
7 issue?

8 MS. WALKER: Judy walker, and I'll speak to  
9 1516 specifically.

10 Two things. One, that has been requested for a  
11 occupancy of 12. I would like Yellowstone to directly  
12 address issues that were brought up earlier. Is that 12  
13 residents plus staff? Because we could be looking at  
14 densities much higher than are on the paperwork at this  
15 point.

16                   Secondly, it was intimated that the property  
17 prior to Yellowstone's purchase was a rental, as if that  
18 was something bad. I live at 1571. Not only was the  
19 house at 1561 a rental, the house to the other side of me  
20 is also a rental property.

21                   I knew the residents in those houses. I know  
22 them. They were part of the neighborhood. We exchanged  
23 conversation. We helped each other. It was not a bad  
24 situation of a rental, not as we have now, where it's a  
25 transient situation. It was much more of a neighborhood.

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1                   Thank you.

2                   MR. ALLEN: Okay. I don't see anybody else.  
3 Thank you very much.

4                   We have the testimony in. I think we've  
5 adequately gotten a picture of what this neighborhood is  
6 like and how the recovery facilities effect it. From  
7 here, we want to give the Applicant an opportunity to  
8 respond to some of these issues that have been raised.

9                   MR. ZFATY: Okay. Thank you, Mr. Allen.  
10 Again, Isaac Zfaty on behalf the Yellowstone. And just  
11 so we're clear, am I to respond to the issues addressed  
12 to all four of the properties?

13                   MR. ALLEN: Are we going to be able to keep the  
14 record straight? That's the only concern I have from  
15 start to finish here. And as long as we can, we will.

16                   MR. BOBKO: Mr. Allen, I propose that staff go

17 through, and we go through each one one by one. If  
18 staff --

19 MR. KIFF: Yeah. I think we have a couple of  
20 categories of questions we might like some assistance  
21 with some follow-up. There's more general questions, and  
22 then there may be a few house specific questions.

23 So if that's amenable to the Hearing Officer  
24 and to the applicant --

25 MR. ALLEN: Okay.

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1 MR. KIFF: -- maybe I can direct the questions  
2 to Mr. Zfaty, and if he needs to make a preliminary  
3 comment, that's fine, too.

4 MR. ZFATY: Sure. Well, I'd like to be able to  
5 address some of the comments that were made. And then I  
6 have another point as to the legal discussion in response  
7 to some of this.

8 First off, as to Mr. Hanley's comments, he  
9 talked about the fact that we are not neighbors. I don't  
10 think that that's any part of a criteria or criterion  
11 that we're looking at here.

12 He talked about protecting a fire plug and his  
13 driveway and also parking in front of a hydrant. There  
14 wasn't any specific evidence provided of that. The only  
15 response that we can give, in the absence of any specific  
16 evidence, is that there are remedies for that. And those  
17 remedies don't include the loss of the ability to use a



18 property.

19 If there's a specific automobile that blocks a  
20 driveway or a hydrant, again, without having any specific  
21 evidence that that -- of even who that car belonged to or  
22 whether the person was affiliated with Yellowstone or  
23 how, the only remedy that I think Mr. Hanley has is to  
24 call the authorities and have them come out and cite the  
25 offending vehicle.

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1 He spoke of parties and monkey business.  
2 Again, on that issue, though, we don't have any specific  
3 evidence of it. What we do have is a public record of  
4 citations. And we have received no citations for that  
5 purpose by the Newport Beach Police Department. So  
6 that's probably evidence enough.

7 To the concern of young people being present, I  
8 don't know -- again, I think that's not any kind of  
9 indicia that we're looking at here today, the age of the  
10 people who are associated with Yellowstone. And  
11 moreover, I think that's probably a discriminatory  
12 category that can't be utilized here.

13 As to the cars in the garages, Mr. Hanley  
14 raised that issue, as well as a number of his neighbors  
15 as to a number of the properties. As you know, the City  
16 has gone through and inspected each one of the  
17 properties. So the City has direct evidence of that, as  
18 to whether our garages are empty or full.

19 I think Mr. Abraham -- I think his bar card is  
20 in serious jeopardy here. The City, again, has come  
21 through and looked. And according to Mr. Abraham, there  
22 is a bunch of junk mattresses, et cetera. And he put his  
23 bar card on it. The City has seen firsthand what's  
24 located in our garages.

25 As to Mr. Hanley's concern about the

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1 characterization of alcoholics and drug addicts as  
2 disabled, unfortunately, or fortunately, depending upon  
3 who you are talking to, that's an issue that Mr. Hanley  
4 will have to take up in the United States Congress, who  
5 has seemed it necessary to find that alcoholics and  
6 recovering drug addicts are, per se, disabled.

7 Mr. Walker spoke of cars parked in the street  
8 from people from our homes. Again, we have no  
9 identification of those cars. Without being able to know  
10 who those cars are, license plates, et cetera, it's  
11 impossible for us to even speak to it. I will say this.  
12 As I mentioned in our presentation, we don't allow the  
13 residents to park their cars anywhere near the  
14 facilities. So I don't know, frankly, where that comes  
15 from.

16 As to people coming and going, I think it's  
17 important here to note that the record is devoid of any  
18 timing. As we mentioned, the properties, in their  
19 current state and certainly since they became a part of

20 the City of Newport Beach, does not allow visitors,  
21 people coming and going. The residents certainly can  
22 come and go, but our policy is not one that includes  
23 visitors. And again, we have no identification here of  
24 who these individuals are.

25 Mr. Groskreutz -- and I apologize if I've

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1 mispronounced his name, as someone who is sensitive to  
2 that issue -- spoke of 65 additional people in the  
3 neighborhood. I think that actually mischaracterizes  
4 what's happening here. We've applied to allow the  
5 continued use of our four properties for 65 beds. So  
6 there's no new people coming in.

7 And as discussed in our original presentation,  
8 there has been the abatement of at least two properties  
9 in our neighborhood that we know of, which goes to  
10 another point, which is, in terms of the analysis of  
11 overconcentration, there are currently no permitted group  
12 facilities in our neighborhood.

13 As to the coffee cups on his lawn, again, we  
14 attempt to do our best to make sure that, as to our  
15 residents, something like this doesn't occur.

16 As to his comment that this happened just after  
17 he submitted something to the staff, as the City well  
18 knows, we have no access to that. So there's certainly  
19 no nexus there.

20 To his point of kennels, the issue there that

21 he said quite awhile ago there were kennels, that was the  
22 point, that there were kennels. We are not -- we're not  
23 claiming that -- we're certainly not kennels -- we  
24 replaced any kennels, and we're not commenting on the  
25 presence of kennels currently.

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1 As to his comment that we take in \$65,000 a  
2 month, or even half of that, \$32,500, that's absolutely  
3 not the case. We are a non-profit organization. We are  
4 not profiteers. You can call us -- I don't know that you  
5 can call us a business. I'm not sure what the  
6 significance of it is, but legally we are a non-profit  
7 organization.

8 As to the issue of permits at the homes for the  
9 numbers of rooms, again, I don't think that's at issue at  
10 all here. The City has been able to come through the  
11 homes, examining exactly how many bedrooms are located in  
12 each of these homes. And we have not been cited for any  
13 construction-related permit problems.

14 I spoke about Mr. Abraham's concerns already.

15 As to Mr. Robertson's concerns, he spoke of  
16 drinking in the park. One thing we know for sure is that  
17 none of our residents are drinking at the park. We  
18 actually test the residents of the facility for drugs and  
19 alcohol use. And so that's something that we're quite  
20 certain of. There's absolutely no drinking in the park  
21 that includes any residents at any of the Yellowstone

22 facilities.

23 Same issue as to Mr. Robertson's concerns about  
24 square footage. The City has records of square footage  
25 at the property -- at the properties, at all four of the

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1 properties. And to our knowledge, there's no issues  
2 regarding square footage.

3 There is no interaction between the houses.  
4 This was a concern that, again, Mr. Robertson raised.  
5 Another one of our residents came and confirmed, at least  
6 in her mind, that that wasn't the case. Although, I  
7 think the comment was there might have been women walking  
8 in pajamas. We certainly have no information of that.  
9 That's not something that we would encourage. Certainly  
10 it's something we would discourage if we learned of it.

11 As to the -- again, Mr. Robertson raised the  
12 question of square footage and bedrooms specifically at  
13 20172. The City has records of that.

14 On the issue of secondhand smoke and excessive  
15 smoking, the issue, so we're clear, is under the  
16 Ordinance is excessive smoke, not just mere smoking. And  
17 the City has found -- made a finding that smoking or the  
18 presence of smoke is not an issue at our properties.

19 Mr. McDonough commented on the fact that he  
20 wouldn't allow his grandkids outside of his house any  
21 longer. And on that point, I would say the following:

22 That's a form of, I think, demagoguery that

23 doesn't have any place here. There has been no reports  
24 of any sort of child abuse from any person who lives at  
25 Yellowstone. We have no resident sex offenders at any of

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1 our properties. So we take particular exception to any  
2 kind of connotation that we might be dangerous to  
3 children.

4 Same as to registration cards and as to the  
5 issue of treatment. There is no treatment that goes on  
6 in any of these four properties.

7 I wasn't quite certain as to whether  
8 Mr. Mathena was arguing for us or against us until he  
9 talked about the reasons not to grant reasonable  
10 accommodation.

11 On that point, which I'll address again at the  
12 end of my discussion as to the individual concerns, there  
13 is, as we pointed out earlier, a legal -- specific legal  
14 issue why, as applied to our homes, reasonable  
15 accommodation should be granted if the CUPs are not.

16 Ms. Devine spoke of the family characteristics  
17 and the character of the neighborhood. Just so we're  
18 clear, the record shows that the neighborhood, once it  
19 became a City of Newport Beach neighborhood, already  
20 included all of these properties.

21 So to the extent that the City of Newport Beach  
22 is performing any analysis as to whether the character of  
23 the neighborhood would be changing with the grant of any

24 of these use permits, the record is replete with facts  
25 that the neighborhood had its characteristics when it

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1 became the City of Newport Beach. And those  
2 characteristics included all four Yellowstone homes.

3 A couple of the neighbors raised the issue of  
4 managers, and whether those managers are in addition to  
5 the numbers of individuals at these properties. The  
6 answer to that question is they are not.

7 As to Ms. Devine's concern about the  
8 percentages of recovering alcoholics and addicts, again,  
9 we would emphasize that recovering alcoholics and addicts  
10 are a member of a protected class. So it's not  
11 appropriate to characterize in this proceeding, or any  
12 other in this country, as an indicia for evicting any  
13 individuals from any particular neighborhood the fact  
14 that they are recovering alcoholics or addicts.

15 As to the parking and trash issues that were  
16 raised by Ms. Walker and a couple of her other neighbors,  
17 I think that Mr. Kiff amply raised the fact that there  
18 may have been some additional trash in the neighborhood  
19 due to other properties. We don't have any trash -- any  
20 additional trash concerns. Our trash runs in the same as  
21 everyone else's in our neighborhood. We have the same  
22 number of trash bins. We don't have any special runs.  
23 Waste management doesn't come by any more for our  
24 properties than it does for anyone else's.

1 staff. I addressed that.

2 Ms. Lee talked about the construction issue.  
3 So the records clear on that, I think I did make it clear  
4 in my initial presentation, but we were merely pointing  
5 out that there was construction in the neighborhood. And  
6 to the extent in any additional trash might have been  
7 present in the neighborhood, it may have been due to that  
8 or also the beer cans or bottles, or whatever it was that  
9 was discussed. Again, there is no alcohol in any of  
10 these homes.

11 Ms. Lee raised the permit issue in terms of  
12 building permits. Again, there's no evidence before you,  
13 Mr. Allen, that we are out of compliance with any  
14 building permits.

15 And Ms. Lee also asked that we address the  
16 issue of an Oxford Charter. An Oxford Charter -- an  
17 Oxford House is a concept of recovery from alcohol  
18 addiction. In its simplest form, an Oxford House  
19 describes a democratically run, self-supporting,  
20 drug-free home. And it's typically a non-profit  
21 501(C)(3) corporation. It's a Federal charter.

22 And just a brief history of it is, in 1988,  
23 Congress established the requirements that every state in  
24 the country establish a revolving fund to help start  
25 houses based on the Oxford House model. Since that time,



1 Oxford House, Inc., has organized a national headquarters  
2 to help individuals throughout the United States open  
3 these Oxford homes.

4 Ms. Groskreutz -- and again, I apologize if I  
5 mispronounce her name -- spoke of trash issues, which  
6 I've already discussed, house meetings, which I've  
7 already addressed, and cars.

8 She also talked about property values. There's  
9 sort of -- as a trial lawyer, that's sort of a common  
10 mistake that happens in trials, and it's that if you open  
11 the door to something that's not relevant, that someone  
12 can come back and respond to things that are not  
13 relevant.

14 And as an evidentiary matter, that's simply not  
15 true. But I will take a mea culpa on that one. I  
16 understand that's not an issue, so we won't talk about  
17 that any longer.

18 Realtor disclosures regarding sober living  
19 homes are not an issue that we look at. It's part and  
20 parcel, I think, to the previous.

21 She spoke of her plant being knocked over or a  
22 plant being knocked over. Again, without any specifics,  
23 I don't even know how to address that.

24 Ms. Bosley spoke of her friend who had a  
25 problem with us agreeing to share the cost of a new

1 fence. Again, I don't think that's an issue that we are  
2 looking at here today.

3 And Ms. Bosley also commented on -- I think her  
4 words were, "We are like a gang." Again, we take  
5 exception to that type of demagoguery in this proceeding.  
6 More importantly, there's absolutely no evidence of gang  
7 activity related or associated with Yellowstone.

8 Now, as to the legal discussion, the reason  
9 that I spent so much time on Jones -- and I hope it isn't  
10 lost on you, Mr. Allen -- is that when we talk about  
11 constitutionality of ordinances such as this one, though  
12 you are not called to judge the constitutionality, and  
13 though the constitutionality of this -- the facial  
14 constitutionality of this statute has been, at least,  
15 partially passed on by Judge Selna, what's critical in  
16 any sort of ordinance is the application of the  
17 ordinance.

18 When we're talking about the issues that we're  
19 discussing here, application absolutely bears on  
20 constitutionality. There are plenty of instances where  
21 in otherwise un- -- excuse me, otherwise constitutional  
22 statute can become unconstitutional based on the way that  
23 it's applied.

24 The current facial validity of this ordinance  
25 could become a future substantive invalidity in light of

1 this application. And it's not just in relation to these  
2 properties or any particular applicant. It's in relation  
3 to, as we spent quite a considerable amount of time on,  
4 the entire ordinance as set forth in Jones.

5 Thank you.

6 MR. ALLEN: I think let's take a five-minute  
7 break here, and we'll resume. Let's resume at 3- or 4:25  
8 by the clock on the wall.

9 (Pause in proceeding.)

10 MR. ALLEN: All right. So let's go back on the  
11 record, please.

12 I believe that the Applicant just finished  
13 presenting some rebuttal to the public comments that were  
14 made, and it appears that Mr. Kiff may be ready to also  
15 do some explanations.

16 MR. KIFF: Actually, I had a number of  
17 questions that may be to put a finer point on some of the  
18 things that Mr. Zfaty, as well as the residents, raised.

19 I was hoping maybe you could return to the  
20 podium and help me answer some questions.

21 MR. ZFATY: Sure.

22 MR. KIFF: So forgive me if some of these are a  
23 little bit redundant, but -- so do folks who are  
24 complaints of Yellowstone, are they allowed to have  
25 personal cars with them during their stay at Yellowstone?

1 MR. ZFATY: No, I don't believe so. No.

2 MR. KIFF: No, they are not?

3 MR. ZFATY: No.

4 MR. KIFF: So for the record, they are not  
5 allowed.

6 So when the neighbors that have alleged folks  
7 are either parking near by or walking in, so is that not  
8 a truthful statement, or it's a recent change?

9 MR. ZFATY: Well, I don't know if it's truthful  
10 or untruthful. It's hard to comment, as I mentioned,  
11 without any kind of specific identification as to --

12 MR. KIFF: Understood. But I guess was there a  
13 recent change in policy that clients during their stay at  
14 Yellowstone could not have cars? So, a couple of months  
15 ago where they allowed for cars and now they are not?

16 MR. ZFATY: No, certainly not within the timing  
17 of the enactment of the Ordinance in February.

18 MR. KIFF: Okay. Let's talk then a little bit  
19 a finer point on the meetings. So what meetings do take  
20 place at an individual house?

21 MR. ZFATY: There are -- there's one meeting  
22 per week.

23 MR. KIFF: That's the so-called house meeting?

24 MR. ZFATY: It's a house meeting.

25 MR. KIFF: Who's doing chores, and that kind of

1     thing?  
2             MR. ZFATY: Essentially.  
3             MR. KIFF: Okay. So do AA meetings take place  
4     inside the house or in the yard?  
5             MR. ZFATY: No. No.  
6             MR. KIFF: Okay.  
7             MR. ZFATY: There's some information that I  
8     don't have, so --  
9             MR. KIFF: I don't have, understood.  
10            MR. ALLEN: And you should, by all means, have  
11     the client talk also here. If you don't know the rule,  
12     please.  
13            MR. ZFATY: I will look to them if I don't know  
14     the answer or the rule.  
15            MR. KIFF: Okay.  
16            MR. ZFATY: I think the client's a little too  
17     nervous to get up here to speak.  
18            MR. ALLEN: We still need to know what the  
19     rules are. I think it's very important to --  
20            MR. ZFATY: No, understood.  
21            MR. ALLEN: -- overall.  
22            MR. ZFATY: Understood.  
23            MR. KIFF: Yeah. But oftentimes, the reason  
24     I'm asking these questions is to develop a condition --  
25            MR. ALLEN: Right.

1 MR. KIFF: -- whether or not it's -- there's a  
2 couple of homes that we recommend the denial of and the  
3 ones we recommend approval of, I'm trying to help craft  
4 those conditions.

5 MR. ZFATY: Certainly.

6 MR. KIFF: Even if this were a non-recovery  
7 home use, there wouldn't be an assembly use allowed at  
8 that home, whatever home it was, without a separate use  
9 permit.

10 And then the assembly use and the meeting uses  
11 certainly drive our consideration over parking. Because  
12 even if folks walk to it, arguably, they are parking out  
13 on Santa Ana or some other location. So again, I think I  
14 understand now that no meetings would take place at a  
15 home except for a house meeting.

16 Am I correct in saying that those house  
17 meetings would only involve the clients at that home who  
18 reside there at that home and maybe the on-site manager  
19 and assistant manager?

20 MR. ZFATY: Correct.

21 MR. KIFF: Okay. And regarding the on-site  
22 manager and assistant manager, so do they reside at the  
23 home as well? In other words, is that where they live  
24 and use a bed there?

25 MR. ZFATY: Well, you know, I don't know the

2 guess my question would be, is that relevant to the  
3 analysis?

4 MR. KIFF: It's certainly relevant to the bed  
5 analysis, yes.

6 MR. ZFATY: As to the number of beds, as I  
7 mentioned, the number of beds that we've applied for are  
8 the number of beds that we intend to have sleep there.

9 I'm a little concerned -- without even asking  
10 my client the answer to that question, I'm a little  
11 concerned about privacy issues. So that's why I'm asking  
12 Mr. Kiff if there's any relevancy.

13 If the question is to the number of beds, the  
14 answer is the number of beds that we've applied for  
15 represent the number of people who will actually be  
16 sleeping and residing there.

17 MR. KIFF: Okay. So -- because it involves  
18 another issue, too, in that other conditions that we've  
19 required on other homes have 24/7 on-site supervision.  
20 So it would be my expectation that we would apply that to  
21 the condition with this facility as well. And the  
22 occupancy of the home should accommodate those one or two  
23 individuals -- I imagine it's one individual -- within  
24 the approved bed count?

25 MR. ZFATY: That's correct.

□

1 MR. KIFF: Okay.

2 MR. ZFATY: As to everything you said except  
Page 92

3 for the one. You assume it's one individual. In some  
4 instances, it's two. It may be two in all four cases.

5 MR. KIFF: Understood.

6 MR. ZFATY: I'm not as facile with the numbers,  
7 but our application does reveal those numbers.

8 MR. KIFF: Okay. And then, the issue of the  
9 garages. We enforce cluttered garages all the time  
10 everywhere. We usually do it because someone calls us  
11 and says, "Hey, that neighbor over there has a garage  
12 that's full, and as a result, parking is constrained in  
13 that neighborhood." So we will go and enforce that.

14 There's always a concern whenever we do that  
15 anywhere at any home that we have to give advanced notice  
16 of the inspection, and there's a lot of clearing before  
17 we get there, and then a lot of replacing after we leave.

18 The condition we would apply to the Yellowstone  
19 homes, just like the other homes, is that all parking at  
20 all times -- sorry -- all garages at all times is  
21 available for parking, so -- per the Code. That's how it  
22 applies to every home in town.

23 MR. ZFATY: Certainly.

24 MR. KIFF: Granted, we don't all get all of  
25 them. Sometimes it takes a complaint to get us to follow

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1 up on that.

2 MR. BOBKO: Can we have two minutes to confer?

3 MR. ALLEN: We need to take short break off the  
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4 record. Two minutes or so?

5 MR. KIFF: Two minutes is fine.

6 (Pause in proceeding.)

7 MR. KIFF: I'm ready again. Let's proceed on  
8 the record.

9 Mr. Zfaty, I was hoping to go back to the issue  
10 of staff and beds and clients. And as was pointed out to  
11 me, it's critical to another analysis we'll do as a part  
12 of the reasonable accommodation findings that involve  
13 financial data that we know who is a paid client or  
14 potentially a sponsored client.

15 Because I imagine some of your clients are,  
16 indeed, on a scholarship, for instance, or sponsored.  
17 who is a paid client residing there, taking up a bed,  
18 versus who is an assistant manager or manager residing  
19 there taking up a bed?

20 So I was hoping maybe we'd have a little bit  
21 greater discussion about that. Maybe with the instance  
22 of, say, 20172, if you're requesting -- and I believe my  
23 numbers may be wrong -- 17 beds at that facility, of  
24 those 17 beds, will 15 be clients and two be a manager or  
25 assistant manager? And I don't see how this would

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1 violate privacy rights, because we're obviously not  
2 asking about individual's names or we're -- just asking  
3 for titles and roles.

4 MR. ZFATY: That's fine. The number is 18,  
Page 94

5 Mr. Kiff, and two of those are managers.

6 MR. KIFF: So of the -- let me just restate it  
7 and you'd agree, I assume. Of the 18 beds, for instance,  
8 asked for at 20172, 16 people are clients and two are  
9 staff?

10 MR. ZFATY: Correct.

11 MR. KIFF: Okay. Thanks. All right. Just a  
12 quick question about the curfew. That isn't -- your  
13 previous question helps me answer that. That's enforced  
14 by the manager and assistant manager?

15 MR. ZFATY: Correct.

16 MR. KIFF: Okay. And when you talk about quiet  
17 hours versus lights out, quiet hours in our previous  
18 approvals has indicated that you can't hear a sound above  
19 the typical sound that folks in the house would make. In  
20 other words, no blarring music or no loud TV's at the  
21 property line. So that's a condition we would apply,  
22 just informational there.

23 You answered the question about what Oxford  
24 House Charter means.

25 I was hoping maybe you could speak a little bit

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1 about how that discrepancy been the -- may be a  
2 discrepancy on the web site that the person raised about  
3 having a 90-day stay versus a six-month stay. What is a  
4 typical stay at Yellowstone House?

5 MR. ZFATY: Currently the typical stay -- the  
Page 95

6 average stay is six months.  
 7 MR. KIFF: Average stay is six months, so --  
 8 MR. ZFATY: There are some that stay longer;  
 9 there are some that --  
 10 MR. KIFF: Maybe I wanted a mean rather than  
 11 max.  
 12 MR. ZFATY: I think the mean is six.  
 13 MR. KIFF: Okay.  
 14 MR. ZFATY: That's the normal stay.  
 15 MR. KIFF: Okay. I had a question, then -- we  
 16 talked about beds and the sizes of the buildings, and the  
 17 bedrooms and the size of the buildings.  
 18 MR. ZFATY: Excuse me. Can I clarify that? I  
 19 don't think it's six months for each of the four  
 20 properties, if I recall correctly.  
 21 MR. KIFF: Okay.  
 22 MR. ZFATY: Am I wrong about that? I'm sorry.  
 23 I'm wrong. It is six for each, okay. I apologize.  
 24 MR. KIFF: Okay. Just for the record, about  
 25 bedrooms and permits, when the City annexes territory

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□

1 like west Santa Ana Heights, we don't go in and do a  
 2 building records inspection for each home. That would be  
 3 unreasonable.  
 4 So we don't know whether a conversion occurred  
 5 prior to annexation, and the folks at Yellowstone, for  
 6 instance, bought the house with the conversion, versus  
 Page 96

7 the folks at Yellowstone House making the conversion  
8 later that may have been contrary to a plan.

9 It's not something we typically investigate,  
10 unless a neighbor is calling in saying, "I think those  
11 folks are doing illegal construction," and then we'd send  
12 the Building Department by.

13 And further, our own analysis of these homes  
14 for the use permit process did not involve a building  
15 inspector going out. These were contract planning staff.  
16 So the folks there were not looking at whether or not one  
17 room or another was permitted. Indeed, we don't have the  
18 old county plans on each home.

19 Question involving the County. Is it your  
20 understanding or your client's understanding that there  
21 was or was not a use permit requirement for this type of  
22 facility prior to annexation?

23 MR. ZFATY: My understanding is there was not.  
24 I don't believe that we were required to have any use  
25 permit when we were an unincorporated area. And I don't

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1 believe that we had one.

2 MR. KIFF: Okay. That's my second question.  
3 We may go back and look at that. I'm not -- sometimes  
4 what the County does doesn't entirely surprise me. But  
5 I'd be quite surprised if they didn't have any use permit  
6 requirement for a group residential use above six people.

7 MR. ZFATY: We'll also take a look and see  
Page 97

8 if -- I will take a look and see if we did have one. To  
9 my knowledge, we did not.

10 MR. KIFF: Okay. Let me try to make a finer  
11 point on one thing. You said a couple times, Mr. Zfaty,  
12 that there's no interaction between houses. Is that,  
13 indeed -- are we interpreting that to mean that there's  
14 no interaction between the people in the houses?

15 And that kind of gets back to the meeting  
16 issue. For instance, one of the conditions would be  
17 that -- well, sorry. Let me back up a little bit.

18 Generally, we follow the State Alcohol and Drug  
19 Program mandates about privacy issues in recovery  
20 facilities. And what ADP says is that you're not allowed  
21 to have clients go from -- visit one house and -- live in  
22 one house and visit another without everyone in each  
23 house signing a disclosure agreement saying that they  
24 waive their right to privacy, because they are entitled  
25 to some privacy within an individual home as persons in

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1 recovery.

2 So, therefore, we have applied that as a  
3 condition, that folks are not allowed to intermingle  
4 between houses until or unless those waivers are  
5 executed. But it sounds like to me you're saying they  
6 don't have any reason necessarily to go from one house  
7 for another.

8 MR. ZFATY: No. We don't have interaction  
Page 98

9 between the homes.

10 MR. KIFF: Okay. That is my list of questions,  
11 actually.

12 I would note one thing just for the record.  
13 what we've followed, typically, when folks say a  
14 realtor's obligated to disclose the presence of a  
15 recovery facility nearby, it's been our advice through  
16 the realtors is that they are not, and they shouldn't.  
17 Again, you're disclosing the identity of a protected  
18 class. I know a lot of realtors don't always understand  
19 that, and that's not something I can solve in any short  
20 time.

21 Again, I think that is the conclusion of my  
22 questions, Mr. Allen, unless Janet, if you had any that I  
23 missed?

24 MS. BROWN: No.

25 MR. KIFF: Okay. In conclusion, then,

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□

1 Mr. Allen, we would still recommend the actions that we  
2 put in our staff report in terms of the use permit, and  
3 that is a reduction in beds to 15 for two facilities and  
4 the abatement of two.

5 with the ones that would remain, we would have  
6 a list of conditions that we'd come back to you with,  
7 that basically are quite similar to conditions we've  
8 approved in the past and, as I stated on the record  
9 today, are the kinds of things involving parking and

10 meetings and staffing, et cetera.

11 MR. ALLEN: Could we discuss the  
12 overconcentration issue a little further? Because it  
13 seems to me that that is the overriding feature here that  
14 brings about your recommendation for approving two and  
15 denying two. It's clear that there is a cluster of uses  
16 in this one particular location.

17 And that in applying the Ordinance criteria  
18 that has been adopted by the Council, if we do go forward  
19 with that and apply the American Planning Institute's --

20 MR. KIFF: Association.

21 MR. ALLEN: -- Association's criteria, which  
22 were incorporated into the Ordinance, how does the block  
23 definition appear to you from the standpoint of being  
24 consistent with what we've done on the Peninsula already  
25 and as it would apply to this?

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1 MR. KIFF: Well, as Janet noted, arguably, a  
2 couple of these blocks are fairly easy to go into the  
3 block test, which generally we've thought of blocks as  
4 being rectangular in nature. But we also have, in this  
5 instance, cul-de-sac blocks, which are not as easy to  
6 analyze.

7 However, just looking at distancing from one  
8 property to another, and, in effect, straight lining some  
9 things, to us, it made the most sense to consider -- that  
10 the neighborhood of the Yellowstone homes as a single

11 block.

12 And we thought we were being on the generous  
13 side in going with the two uses per block versus one use  
14 per block and considering that the home at 1621 and 20172  
15 to be the facilities that should stay and would not  
16 result in an overconcentration.

17 Partially, too, it's because of the clients  
18 served that -- in taking into consideration that  
19 Yellowstone obviously has a male clientele and a female  
20 clientele, obviously, they could change houses around and  
21 move those clients. But to us, it made the most sense to  
22 maintain those homes, in part because the home on  
23 Pegasus, the one in the middle there, that 18 one, it is  
24 in relative --

25 MR. ALLEN: Go down the other side. Okay.

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1 MR. KIFF: And I moved up the other way to the  
2 18. My pointer always -- there we go. It's going to do  
3 that.

4 But this house does have somewhat of a  
5 proximity of the two Lynn Houses. And it's questionable  
6 as to our abatement success there. And these are all  
7 little bits of things that play into our discussion.

8 The major discussion is that it's more  
9 appropriate to maintain this home and this home with that  
10 significant distance, which I think is over 300 feet,  
11 than maintain, say, this and this. This one and this one  
Page 101



12 could be a possibility, but that brings into context the  
13 closeness of the Lynn House facility.

14 These are also facilities that are -- they are  
15 large facilities, so in the interest of the argument that  
16 they made about their financial liability, that -- I may  
17 be have to be corrected -- but it's my understanding that  
18 they believe that 15 beds was the amount that they needed  
19 to remain financially viable.

20 These are also two homes that allow those 15  
21 beds to be accommodated versus, for instance, keeping  
22 16 -- I'm sorry -- 1561, which only would allow for 12  
23 beds because of the size of the house.

24 MR. ALLEN: Yeah, because 1561 is a 12-bed. I  
25 see.

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□

1 well, I'm inclined to follow the staff's  
2 recommendation here, based upon what we have heard today  
3 and the contents of the reports. We don't have a  
4 conditions of approval to be considered for today. But  
5 you would bring them back.

6 And if we can continue this hearing to a date  
7 certain, I would make the determination that 1561 and  
8 1571 -- I'm sorry -- 1561 Indus and 1571 Pegasus be  
9 terminated. And that 1621 Indus and 20712 Redlands be  
10 continued, and that appropriate resolutions be brought  
11 back on all of them, and that there be the analysis on  
12 the overconcentration that we've discussed so far as the

13 block issues are concerned. And at that time, at a  
14 continued date, then we would also go forward with the  
15 reasonable accommodation hearings that have to be done.

16 MR. KIFF: I think that's reasonable. And that  
17 would also allow folks who follow the issue, including  
18 the Applicant, to get a better understanding for our  
19 recommendations.

20 Because one gentleman, I believe it was  
21 Mr. Mathena, appropriately, brought up the fact that a  
22 lot of these materials were not -- especially the  
23 reasonable accommodation materials were not made  
24 available in the manner in which we like to do.  
25 we -- legally, it was appropriate what we did, but the

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1 manner in which we like to provide it was -- should have  
2 been earlier. But I think that's a fair suggestion,  
3 Mr. Allen.

4 MR. ALLEN: I'm going to disappear temporarily  
5 because my computer was unplugged.

6 All right. So then let's proceed to talk about  
7 dates when we can return here and conclude these matters  
8 or at least get through the reasonable accommodation  
9 timing.

10 MR. KIFF: Well, I guess I would look to Kathy  
11 and Janet a little bit, with the caveat that hints the  
12 Applicant certainly, I would propose maybe the 12th or  
13 the 13th of March. Probably the 12th, because -- and  
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14 then maybe go back to 4 o'clock time period to allow more  
15 folks to attend.

16 My reticence in looking at next week is because  
17 I'll be gone, not that it has to happen with me, but for  
18 the Thursday and Friday. And I think that also is a  
19 little bit of a short time to really give the public  
20 their right amount of time to review this.

21 So if that works with various calendars,  
22 including the Applicant's, maybe I'd proposed Thursday  
23 the 12th at 4 o'clock.

24 MR. ALLEN: Thursday the what date? I'm  
25 sorry.

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1 MR. KIFF: Sorry. Thursday, March 12th. We're  
2 always looking back here, because that's where the  
3 calendars are.

4 MR. ZFATY: That's a Friday?

5 MR. KIFF: That's a Thursday.

6 MR. ALLEN: Yes, that's a Thursday.

7 MR. KIFF: I think it's more reasonable to hold  
8 these on Thursdays. This was an exception for us.

9 MR. ALLEN: That's acceptable to me.

10 MR. KIFF: How about the Applicant?

11 MR. ZFATY: I didn't bring my calendar with me,  
12 unfortunately. That sounds fine.

13 MR. KIFF: Okay.

14 MR. ZFATY: We'll hold that day. If there's a  
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15 problem, we'll let you.

16 MR. KIFF: Thank you.

17 MR. ALLEN: All right. So again, Hearing  
18 Officer will follow the recommendation of the staff with  
19 respect to the use permit determinations.

20 And we'll continue the preparation and adoption  
21 of resolutions for those actions to March the 12th, at 4  
22 p.m., and then also we'll continue the public hearings to  
23 that date to hear the reasonable accommodation  
24 considerations.

25 MR. KIFF: Just to be clear, then, Mr. Allen,

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1 your intention is that the public hearing on the use  
2 permits are closed, but the public hearing on the  
3 reasonable accommodation would be continued to that date?

4 MR. ALLEN: Yes.

5 MR. KIFF: Okay.

6 MR. ALLEN: It's my understanding we're  
7 required to do that.

8 MR. KIFF: I believe so, yes.

9 MR. ALLEN: All right. So that concludes the  
10 proceeding for today. And we'll return on March the  
11 12th.

12 (Ending time: 4:53 p.m.)

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I, the undersigned, a Certified Shorthand  
Reporter for the State of California, do hereby certify:

That prior foregoing proceedings were taken  
before me at the time and place herein set forth; that  
any witnesses in the foregoing proceedings, prior to  
testifying, were placed under oath; that a verbatim  
record of the proceedings was made by me using machine  
shorthand which was thereafter transcribed under my  
direction; further, that the foregoing is an accurate  
transcription thereof.

I further certify that I am neither financially  
interested in the action nor a relative or employee of  
any attorney of any of the parties.

IN WITNESS WHEREOF, I have this date subscribed  
my name.

Dated: \_\_\_\_\_

22

09-18838

23

---

Laura A. Millsap, RPR  
CSR No. 9266

24

25

**NOTICE PUBLISHED PRIOR TO MARCH 12, 2009  
HEARING**

## PROOF OF PUBLICATION

STATE OF CALIFORNIA)

) ss.

COUNTY OF ORANGE )

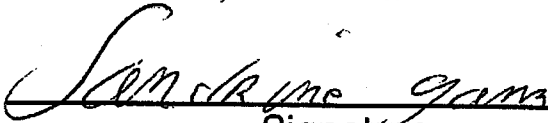
I am a Citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years, and not a party to or interested in the below entitled matter. I am a principal clerk of the NEWPORT BEACH - COSTA MESA DAILY PILOT, a newspaper of general circulation, printed and published in the City of Costa Mesa, County of Orange, State of California, and that attached Notice is a true and complete copy as was printed and published on the following dates:

# FILE COPY

January 31, 2009

I declare, under penalty of perjury, that the foregoing is true and correct.

Executed on February 3, 2009 at  
Costa Mesa, California.

  
Signature

RECEIVED BY  
PLANNING DEPARTMENT

FEB 06 2009

CITY OF NEWPORT BEACH



PUBLIC NOTICE

## HEARING OFFICER OF THE CITY OF NEWPORT BEACH

City Council Chambers of the City of  
Newport Beach  
3300 Newport Boulevard, Newport Beach  
Meeting - February 12, 2009 at 4:00 p.m.

1. SUBJECT: YELLOWSTONE WOMEN'S FIRST STEP HOUSE, INC. (PA2008-105) 1561 INDUS STREET

SUMMARY: An application requesting approval of a use permit to allow the continued operation an unlicensed adult alcohol and/or drug abuse sober living facility for 12 resident clients, females only. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. As a Reasonable Accommodation, the applicant is requesting to be exempted from the Residential Use Classification "Residential Care Facilities, General," as defined by Section 20.05.030 (H) of the Newport Beach Municipal Code (NBMC), and to be treated as a "Single Housekeeping Unit," as defined by NBMC Section 20.03.030. In addition, the applicant is requesting approval of a Reasonable Accommodation for exemption from Chapter 3.36 of the NBMC and Section 3.36.030 which requires 100 percent cost recovery for permits related to user services. Exemption is also requested from Section 20.91A.050 (C.2) of the NBMC to allow more than two residents per bedroom with one additional resident.

APPLICATION: UP2008-034 and RA2009-004

CEQA COMPLIANCE: This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and it is not subject to CEQA.

2. SUBJECT: YELLOWSTONE WOMEN'S FIRST STEP HOUSE, INC. (PA2008-106) 1621 INDUS STREET

SUMMARY: An application requesting approval of a use permit to allow the continued operation an unlicensed adult alcohol and/or drug abuse sober living facility for 18 resident clients, females only. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. As a Reasonable Accommodation, the applicant is requesting to be exempted from the Residential Use Classification "Residential Care Facilities, General," as defined by Section 20.05.030 (H) of the Newport Beach Municipal Code (NBMC), and to be treated as a "Single Housekeeping Unit," as defined by NBMC Section 20.03.030. In addition, the applicant is requesting approval of a Reasonable Accommodation for exemption from Chapter 3.36 of the NBMC and Section 3.36.030 which requires 100 percent cost recovery for permits related to user services. Exemption is also requested from Section 20.91A.050 (C.2) of the NBMC to allow more than two residents per bedroom with one additional resident.

APPLICATION: UP 2008-035 and RA2009-005

CEQA COMPLIANCE: This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and it is not subject to CEQA.

3. SUBJECT: YELLOWSTONE WOMEN'S FIRST STEP HOUSE, INC. (PA2008-107) 1571 PEGASUS STREET

SUMMARY: An application requesting approval of a use permit to allow the continued operation an unlicensed adult alcohol and/or drug abuse sober living facility for 18 resident clients, females only. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. As a Reasonable Accommodation, the applicant is requesting to be exempted from the Residential Use Classification "Residential Care Facilities, General," as defined by Section 20.05.030 (H) of the Newport Beach Municipal Code (NBMC), and to be treated as a "Single Housekeeping Unit," as defined by NBMC Section 20.03.030. In addition, the applicant is requesting approval of a Reasonable Accommodation for exemption from Chapter 3.36 of the NBMC and Section 3.36.030 which requires 100 percent cost recovery for permits related to user services. Exemption is also requested from Section 20.91A.050 (C.2) of the NBMC to allow more than two residents per bedroom with one additional resident.

APPLICATION: UP 2008-036 and RA2009-006

CEQA COMPLIANCE: This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and it is not subject to CEQA.

4. SUBJECT: YELLOWSTONE WOMEN'S FIRST STEP HOUSE, INC. (PA2008-108) 20172 REDLANDS DRIVE

SUMMARY: An application requesting approval of a use permit to allow the continued operation an unlicensed adult alcohol and/or drug abuse sober living facility for 18 resident clients, males only. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. As a Reasonable Accommodation, the applicant is requesting to be exempted from the Residential Use Classification "Residential Care Facilities, General," as defined by Section 20.05.030 (H) of the Newport Beach Municipal Code (NBMC), and to be treated as a "Single Housekeeping Unit," as defined by NBMC Section 20.03.030. In addition, the applicant is requesting approval of a

YS 01244



**NOTICE MAILED PRIOR TO MARCH 12, 2009  
HEARING**

**NOTICE OF PUBLIC HEARING**

**GROUP RESIDENTIAL USE PERMITS**

**YELLOWSTONE WOMEN'S FIRST STEP HOUSE, INC.**

**1561 INDUS STREET, 1621 INDUS STREET, 1571 PEGASUS STREET, & 20172 REDLANDS DRIVE**

NOTICE IS HEREBY GIVEN that a Hearing Officer designated by the City Council of the City of Newport Beach will conduct a public hearing on **February 12, 2009**, at 4:00 p.m. in the City Council Chambers (Building A) at 3300 Newport Boulevard, Newport Beach, California. The Hearing Officer will consider the applications of Yellowstone Women's First Step House, Inc., for four separate Use Permits and requests for Reasonable Accommodation at four locations. These are as follows:

1. 1561 Indus Street (UP2008-034 and RA2009-004). An application requesting approval of a use permit to allow the continued operation an unlicensed adult alcohol and/or drug abuse sober living facility for 12 resident clients, females only. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. As a Reasonable Accommodation, the applicant is requesting to be exempted from the Residential Use Classification "Residential Care Facilities, General," as defined by Section 20.05.030 (H) of the Newport Beach Municipal Code (NBMC), and to be treated as a "Single Housekeeping Unit," as defined by NBMC Section 20.03.030. In addition, the applicant is requesting approval of a Reasonable Accommodation for exemption from Chapter 3.36 of the NBMC and Section 3.36.030 which requires 100 percent cost recovery for permits related to user services. Exemption is also requested from Section 20.91A.050 (C.2) of the NBMC to allow more than two residents per bedroom with one additional resident.
2. 1621 Indus Street (UP 2008-035 and RA2009-005). An application requesting approval of a use permit to allow the continued operation an unlicensed adult alcohol and/or drug abuse sober living facility for 18 resident clients, females only. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. As a Reasonable Accommodation, the applicant is requesting to be exempted from the Residential Use Classification "Residential Care Facilities, General," as defined by Section 20.05.030 (H) of the Newport Beach Municipal Code (NBMC), and to be treated as a "Single Housekeeping Unit," as defined by NBMC Section 20.03.030. In addition, the applicant is requesting approval of a Reasonable Accommodation for exemption from Chapter 3.36 of the NBMC and Section 3.36.030 which requires 100 percent cost recovery for permits related to user services. Exemption is also requested from Section 20.91A.050 (C.2) of the NBMC to allow more than two residents per bedroom with one additional resident.
3. 1571 Pegasus Street (UP 2008-036 and RA2009-006). An application requesting approval of a use permit to allow the continued operation an unlicensed adult alcohol and/or drug abuse sober living facility for 18 resident clients, females only. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. As a Reasonable Accommodation, the applicant is requesting to be exempted from the Residential Use Classification "Residential Care Facilities, General," as defined by Section 20.05.030 (H) of the Newport Beach Municipal Code (NBMC), and to be treated as a "Single Housekeeping Unit," as defined by NBMC Section 20.03.030. In addition, the applicant is requesting approval of a Reasonable Accommodation for exemption from Chapter 3.36 of the NBMC and Section 3.36.030 which requires 100 percent cost recovery for permits related to user services. Exemption is also requested from Section 20.91A.050 (C.2) of the NBMC to allow more than two residents per bedroom with one additional resident.
4. 20172 Redlands Drive (UP 2008-037 and RA2009-007). An application requesting approval of a use permit to allow the continued operation an unlicensed adult alcohol and/or drug abuse sober living facility for 18 resident clients, males only. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. As a Reasonable Accommodation, the applicant is requesting to be exempted from the Residential Use Classification "Residential Care Facilities, General," as defined by Section 20.05.030 (H) of the Newport Beach Municipal Code (NBMC), and to be treated as a "Single Housekeeping Unit," as defined by NBMC Section 20.03.030. In addition, the applicant is requesting approval of a Reasonable Accommodation for exemption from Chapter 3.36 of the NBMC and Section 3.36.030 which requires 100 percent cost recovery for permits related to user services. Exemption is also requested from Section 20.91A.050 (C.2) of the NBMC to allow more than two residents per bedroom with one additional resident.

This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines). It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and it is not subject to CEQA.

All interested parties may appear and present testimony in regard to these applications. If you challenge these projects in court, you may be limited to raising only those issues you or someone else raised at the public hearing (described in this notice) or in written correspondence delivered to the City, at, or prior to, the public hearing. The staff report may be reviewed at the Planning Department, City of Newport Beach, 3300 Newport Boulevard, Newport Beach, California, 92663 or at the City of Newport Beach website at [www.city.newport-beach.ca.us](http://www.city.newport-beach.ca.us) beginning on the Monday prior to the hearing. For more information, call (949) 644-3232 or (949) 644-3002. To be added to a permanent notification list of these hearings, e-mail [dkiff@city.newport-beach.ca.us](mailto:dkiff@city.newport-beach.ca.us) and ask to receive these notices.

**Project File No.:** PA2008-105, PA2008-106, PA2008-107 and PA2008-108

**Activity No.:** UP2008-034/RA2009-004, UP2008-035/RA2009-005, UP2008-037/RA2009-006 and UP2008-038/RA2009-007

Dave Kiff, Assistant City Manager, City of Newport Beach

**Owner Listing within 300' of:**  
 20172 Redlands Drive PA2008-108 for UP2008-037  
 1571 Pegasus Street PA2008-107 for UP2008-036  
 1561 Indus Street PA2008-105 for UP2008-034  
 1621 Indus Street PA2008-106 for UP2008-035

APN	RESIDENT/OWNER	ADDRESS	STREET/SUITE	CITY	STATE	ZIP
119 351 01	ERIC ROSENTHAL	1661	INDUS ST	SANTA ANA	CA	92707
119 351 02	KATHLEEN A LOOMAN	1671	INDUS ST	SANTA ANA	CA	92707
119 351 03	WILSON REED ROBINSON	20091	KLINE DR	SANTA ANA	CA	92707
119 351 17	VINCENT D COOK	1692	PEGASUS ST	SANTA ANA	CA	92707
119 351 18	HENRY D O'SHEA	1672	PEGASUS ST	SANTA ANA	CA	92707
119 351 19	GARY DEVINE	1662	PEGASUS ST	SANTA ANA	CA	92707
119 351 20	WILLIAM H BOSSERT	1661	ORCHARD DR	SANTA ANA	CA	92707
119 351 21	LOUISE C LEE	1671	ORCHARD DR	SANTA ANA	CA	92707
119 352 01	GRAZIANO & DEN PESTARINO	2809	LA SALLE AVE	COSTA MESA	CA	92626
119 352 02	KLINE TRUST	NA	PO BOX 6465	IRVINE	CA	92616
119 352 03	MATTHEW L BIESER	20141	KLINE DR	SANTA ANA	CA	92707
119 352 04	MICHAEL S CHRISTY	20151	KLINE DR	SANTA ANA	CA	92707
119 352 05	ROBERT LEO DUBE'	20161	KLINE DR	SANTA ANA	CA	92707
119 352 06	ROSA BALOGH	20181	KLINE DR	SANTA ANA	CA	92707
119 352 07	BEATRICE BOCSI	1681	PEGASUS ST	SANTA ANA	CA	92707
119 352 08	KATHLEEN M ANDREWS	1671	PEGASUS ST	SANTA ANA	CA	92707
119 352 09	FRANK H MASTERSON	20152	RIVERSIDE DR	SANTA ANA	CA	92707
119 352 10	EDLER PAUL M FAMILY TRUST	20142	RIVERSIDE DR	SANTA ANA	CA	92707
119 352 11	ANGUS E RICHARDSON	20122	RIVERSIDE DR	SANTA ANA	CA	92707
119 352 12	GEORGE L ROBERTSON	20112	RIVERSIDE DR	SANTA ANA	CA	92707
119 361 01	JAMES C HARVEY	1651	INDUS ST	SANTA ANA	CA	92707
119 361 02	YURETTA LORMAN	NA	PO BOX 2421	COSTA MESA	CA	92628
119 361 03	PETER H WEISMANN	1631	INDUS ST	SANTA ANA	CA	92707
119 361 04	THAMES TRUST	28	IMA LOA CT	NEWPORT BEACH	CA	92663
119 361 05	ROBERT B HANLEY	1601	INDUS ST	SANTA ANA	CA	92707
119 361 06	CHARLOTTE C Z; HOGAN	507	ALTA VISTA DR	SANTA CRUZ	CA	95060
119 361 07	WILLIAM D WALKER	1571	INDUS ST	SANTA ANA	CA	92707
119 361 08	ANNA THAMES	154	E BAY ST	COSTA MESA	CA	92627
119 361 09	TRAVIS & JENNIFER HAINING	1572	INDUS ST	SANTA ANA	CA	92707
119 361 10	BRIAN PATRICK SULLIVAN	1592	INDUS ST	SANTA ANA	CA	92707
119 361 11	THOMPSON MALCOLM F TRUST	1602	INDUS ST	SANTA ANA	CA	92707
119 361 12	JONATHAN & JANICE DAVIS	1601	PEGASUS ST	SANTA ANA	CA	92707
119 361 13	DANIELLE J SEARS	1591	PEGASUS ST	SANTA ANA	CA	92707
119 361 14	ANNA MARIE THAMES	1571	PEGASUS ST	SANTA ANA	CA	92707
119 361 15	WAYNE E ROGALLA	1561	PEGASUS ST	SANTA ANA	CA	92707
119 361 16	CHESTER P GROSKREUTZ	1551	PEGASUS ST	SANTA ANA	CA	92707
119 361 17	PETER ALLEN KEMMERLY	1531	PEGASUS ST	SANTA ANA	CA	92707
119 361 18	JOSEPH & L R SANDOR & CYNTHIA	1521	PEGASUS ST	SANTA ANA	CA	92707
119 361 19	JACK MOTLEY	1501	PEGASUS ST	SANTA ANA	CA	92707
119 361 25	FV SANTA ANA LLC	21	ROADRUNNER CT	COTO DE CAZA	CA	92679

**Owner Listing within 300' of:**

20172 Redlands Drive PA2008-108 for UP2008-037

1571 Pegasus Street PA2008-107 for UP2008-036

1561 Indus Street PA2008-105 for UP2008-034

1621 Indus Street PA2008-106 for UP2008-035

APN	RESIDENT/OWNER	ADDRESS	STREET/SUITE	CITY	STATE	ZIP
119 362 01	PATRICIA RUTH SANDERS	20111	RIVERSIDE DR	SANTA ANA	CA	92707
119 362 02	DAVID M PLISCO	20121	RIVERSIDE DR	SANTA ANA	CA	92707
119 362 03	RIVERSIDE TRUST 20141	17853	SANTIAGO BLVD	VILLA PARK	CA	92861
119 362 04	WELLS FARGO BK NA	3476	STATEVIEW BLVD	FORT MILL	SC	29715
119 362 05	DUFFY FAMILY TRUST	1651	PEGASUS ST	SANTA ANA	CA	92707
119 362 06	MICHAEL & BARBARA GOOD	1631	PEGASUS ST	SANTA ANA	CA	92707
119 362 07	STEPHEN THAMES	28	IMA LOA CT	NEWPORT BEACH	CA	92663
119 362 08	ANNIE N PIERMONT	20162	REDLANDS DR	SANTA ANA	CA	92707
119 362 09	MICHAEL G FEDORCHEK	20152	REDLANDS DR	SANTA ANA	CA	92707
119 362 10	PETER P ANDREWS	20132	REDLANDS DR	SANTA ANA	CA	92707
119 362 11	BOSLEY TRUST	1632	INDUS ST	SANTA ANA	CA	92707
119 363 01	EDWARD PATRICK KEHOE	1642	PEGASUS ST	SANTA ANA	CA	92707
119 363 02	SOHRAB HASHEM	1632	PEGASUS ST	SANTA ANA	CA	92707
119 363 03	JACK GRUBISICH	411	S HARBOR BLVD	SANTA ANA	CA	92704
119 363 04	THOMAS JOHN QUEBBEMANN	1621	ORCHARD DR	SANTA ANA	CA	92707
119 363 05	R WESLEY BEAVERS	1631	ORCHARD DR	SANTA ANA	CA	92707
119 363 06	YI HAN WEI	1641	ORCHARD DR	SANTA ANA	CA	92707
119 364 01	WARREN FAMILY TRUST	NA	PO BOX 5474	NEWPORT BEACH	CA	92662
119 364 02	STEPHEN E ABRAHAM	1592	PEGASUS ST	SANTA ANA	CA	92707
119 364 03	LUZ APELES	1572	PEGASUS ST	SANTA ANA	CA	92707
119 364 04	MCDONOUGH 2005 TRUST	1562	PEGASUS ST	SANTA ANA	CA	92707
119 364 05	BRIAN WECKLICH	NA	PO BOX 1803	COSTA MESA	CA	92628
119 364 06	COU	1532	PEGASUS ST	SANTA ANA	CA	92707
119 364 07	C SEPARATE PROP CHIARENZA	1522	PEGASUS ST	SANTA ANA	CA	92707
119 364 08	US BANK NA SERIES 2007-1	1502	PEGASUS ST	SANTA ANA	CA	92707
119 364 10	JAMES J & JULIA L ISAACS III	1541	ORCHARD DR	SANTA ANA	CA	92707
119 364 11	DAVID KERREK	1551	ORCHARD DR	SANTA ANA	CA	92707
119 364 12	JOHN C ENGLISH	1561	ORCHARD DR	SANTA ANA	CA	92707
119 364 13	LILLIAN V MARTIN	1571	ORCHARD DR	SANTA ANA	CA	92707
119 364 14	KANJER TRUST	1591	ORCHARD DR	SANTA ANA	CA	92707
119 364 15	CHURCHILL TRUST	1801	PARK COURT PL #B	SANTA ANA	CA	92701
119 364 19	PAUL PERRY	1511	ORCHARD DR	SANTA ANA	CA	92707

**Resident Listing within 300' of:**  
20172 Redlands Drive PA2008-108 for UP2008-037  
1571 Pegasus Street PA2008-107 for UP2008-036  
1561 Indus Street PA2008-105 for UP2008-034  
1621 Indus Street PA2008-106 for UP2008-035

APN	RESIDENT/OWNER	ADDRESS	STREET/SUITE	CITY	STATE	ZIP
119 351 19	RESIDENT	1662	PEGASUS ST	NEWPORT BEACH	CA	92707
119 364 19	RESIDENT	1511	ORCHARD DR	NEWPORT BEACH	CA	92707
119 361 18	RESIDENT	1521	PEGASUS ST	NEWPORT BEACH	CA	92707
119 361 16	RESIDENT	1551	PEGASUS ST	NEWPORT BEACH	CA	92707
119 364 02	RESIDENT	1592	PEGASUS ST	NEWPORT BEACH	CA	92707
119 361 10	RESIDENT	1592	INDUS ST	NEWPORT BEACH	CA	92707
119 351 17	RESIDENT	1692	PEGASUS ST	NEWPORT BEACH	CA	92707
119 352 04	RESIDENT	20151	KLINE DR	NEWPORT BEACH	CA	92707
119 362 03	RESIDENT	20141	RIVERSIDE DR	NEWPORT BEACH	CA	92707
119 362 11	RESIDENT	1632	INDUS ST	NEWPORT BEACH	CA	92707
119 364 08	RESIDENT	1502	PEGASUS ST	NEWPORT BEACH	CA	92707
119 361 13	RESIDENT	1591	PEGASUS ST	NEWPORT BEACH	CA	92707
119 361 12	RESIDENT	1601	PEGASUS ST	NEWPORT BEACH	CA	92707
119 361 06	RESIDENT	1591	INDUS ST	NEWPORT BEACH	CA	92707
119 352 07	RESIDENT	1681	PEGASUS ST	NEWPORT BEACH	CA	92707
119 363 01	RESIDENT	1642	PEGASUS ST	NEWPORT BEACH	CA	92707
119 351 21	RESIDENT	1671	ORCHARD DR	NEWPORT BEACH	CA	92707
119 351 18	RESIDENT	1672	PEGASUS ST	NEWPORT BEACH	CA	92707
119 364 11	RESIDENT	1551	ORCHARD DR	NEWPORT BEACH	CA	92707
119 361 14	RESIDENT	1571	PEGASUS ST	NEWPORT BEACH	CA	92707
119 361 11	RESIDENT	1602	INDUS ST	NEWPORT BEACH	CA	92707
119 362 09	RESIDENT	20152	REDLANDS DR	NEWPORT BEACH	CA	92707
119 352 05	RESIDENT	20161	KLINE DR	NEWPORT BEACH	CA	92707
119 352 02	RESIDENT	20121	KLINE DR	NEWPORT BEACH	CA	92707
119 361 02	RESIDENT	1641	INDUS ST	NEWPORT BEACH	CA	92707
119 364 15	RESIDENT	1601	ORCHARD DR	NEWPORT BEACH	CA	92707
119 361 19	RESIDENT	1501	PEGASUS ST	NEWPORT BEACH	CA	92707
119 364 05	RESIDENT	1552	PEGASUS ST	NEWPORT BEACH	CA	92707
119 361 07	RESIDENT	1571	INDUS ST	NEWPORT BEACH	CA	92707
119 362 05	RESIDENT	1651	PEGASUS ST	NEWPORT BEACH	CA	92707
119 361 01	RESIDENT	1651	INDUS ST	NEWPORT BEACH	CA	92707
119 351 01	RESIDENT	1661	INDUS ST	NEWPORT BEACH	CA	92707
119 363 04	RESIDENT	1621	ORCHARD DR	NEWPORT BEACH	CA	92707
119 363 03	RESIDENT	1622	PEGASUS ST	NEWPORT BEACH	CA	92707
119 364 07	RESIDENT	1522	PEGASUS ST	NEWPORT BEACH	CA	92707
119 364 12	RESIDENT	1561	ORCHARD DR	NEWPORT BEACH	CA	92707
119 361 17	RESIDENT	1531	PEGASUS ST	NEWPORT BEACH	CA	92707
119 361 15	RESIDENT	1561	PEGASUS ST	NEWPORT BEACH	CA	92707
119 361 25	RESIDENT	20162	SANTA ANA AVE	NEWPORT BEACH	CA	92707
119 361 04	RESIDENT	1621	INDUS ST	NEWPORT BEACH	CA	92707

**Resident Listing within 300' of:**

20172 Redlands Drive PA2008-108 for UP2008-037

1571 Pegasus Street PA2008-107 for UP2008-036

1561 Indus Street PA2008-105 for UP2008-034

1621 Indus Street PA2008-106 for UP2008-035

119 362 02	RESIDENT	20121	RIVERSIDE DR	NEWPORT BEACH	CA	92707
119 362 01	RESIDENT	20111	RIVERSIDE DR	NEWPORT BEACH	CA	92707
119 352 01	RESIDENT	20111	KLINE DR	NEWPORT BEACH	CA	92707
119 351 02	RESIDENT	1671	INDUS ST	NEWPORT BEACH	CA	92707
119 363 06	RESIDENT	1641	ORCHARD DR	NEWPORT BEACH	CA	92707
119 362 06	RESIDENT	1631	PEGASUS ST	NEWPORT BEACH	CA	92707
119 364 01	RESIDENT	1602	PEGASUS ST	NEWPORT BEACH	CA	92707
119 362 07	RESIDENT	20172	REDLANDS DR	NEWPORT BEACH	CA	92707
119 352 06	RESIDENT	20181	KLINE DR	NEWPORT BEACH	CA	92707
119 352 03	RESIDENT	20141	KLINE DR	NEWPORT BEACH	CA	92707
119 362 10	RESIDENT	20132	REDLANDS DR	NEWPORT BEACH	CA	92707
119 352 12	RESIDENT	20112	RIVERSIDE DR	NEWPORT BEACH	CA	92707
119 363 05	RESIDENT	1631	ORCHARD DR	NEWPORT BEACH	CA	92707
119 363 02	RESIDENT	1632	PEGASUS ST	NEWPORT BEACH	CA	92707
119 351 20	RESIDENT	1661	ORCHARD DR	NEWPORT BEACH	CA	92707
119 364 13	RESIDENT	1571	ORCHARD DR	NEWPORT BEACH	CA	92707
119 364 04	RESIDENT	1562	PEGASUS ST	NEWPORT BEACH	CA	92707
119 364 03	RESIDENT	1572	PEGASUS ST	NEWPORT BEACH	CA	92707
119 362 08	RESIDENT	20162	REDLANDS DR	NEWPORT BEACH	CA	92707
119 352 08	RESIDENT	1671	PEGASUS ST	NEWPORT BEACH	CA	92707
119 362 04	RESIDENT	20151	RIVERSIDE DR	NEWPORT BEACH	CA	92707
119 352 09	RESIDENT	20152	RIVERSIDE DR	NEWPORT BEACH	CA	92707
119 352 10	RESIDENT	20142	RIVERSIDE DR	NEWPORT BEACH	CA	92707
119 364 14	RESIDENT	1591	ORCHARD DR	NEWPORT BEACH	CA	92707
119 364 10	RESIDENT	1541	ORCHARD DR	NEWPORT BEACH	CA	92707
119 364 06	RESIDENT	1532	PEGASUS ST	NEWPORT BEACH	CA	92707
119 361 09	RESIDENT	1572	INDUS ST	NEWPORT BEACH	CA	92707
119 361 08	RESIDENT	1561	INDUS ST	NEWPORT BEACH	CA	92707
119 361 05	RESIDENT	1601	INDUS ST	NEWPORT BEACH	CA	92707
119 361 03	RESIDENT	1631	INDUS ST	NEWPORT BEACH	CA	92707
119 352 11	RESIDENT	20122	RIVERSIDE DR	NEWPORT BEACH	CA	92707
119 351 03	RESIDENT	20091	KLINE DR	NEWPORT BEACH	CA	92707

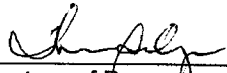


PLANNING DEPARTMENT  
3300 NEWPORT BOULEVARD  
NEWPORT BEACH, CALIFORNIA 92663

PHONE: 949/644-3200

FAX: 949/644-3229

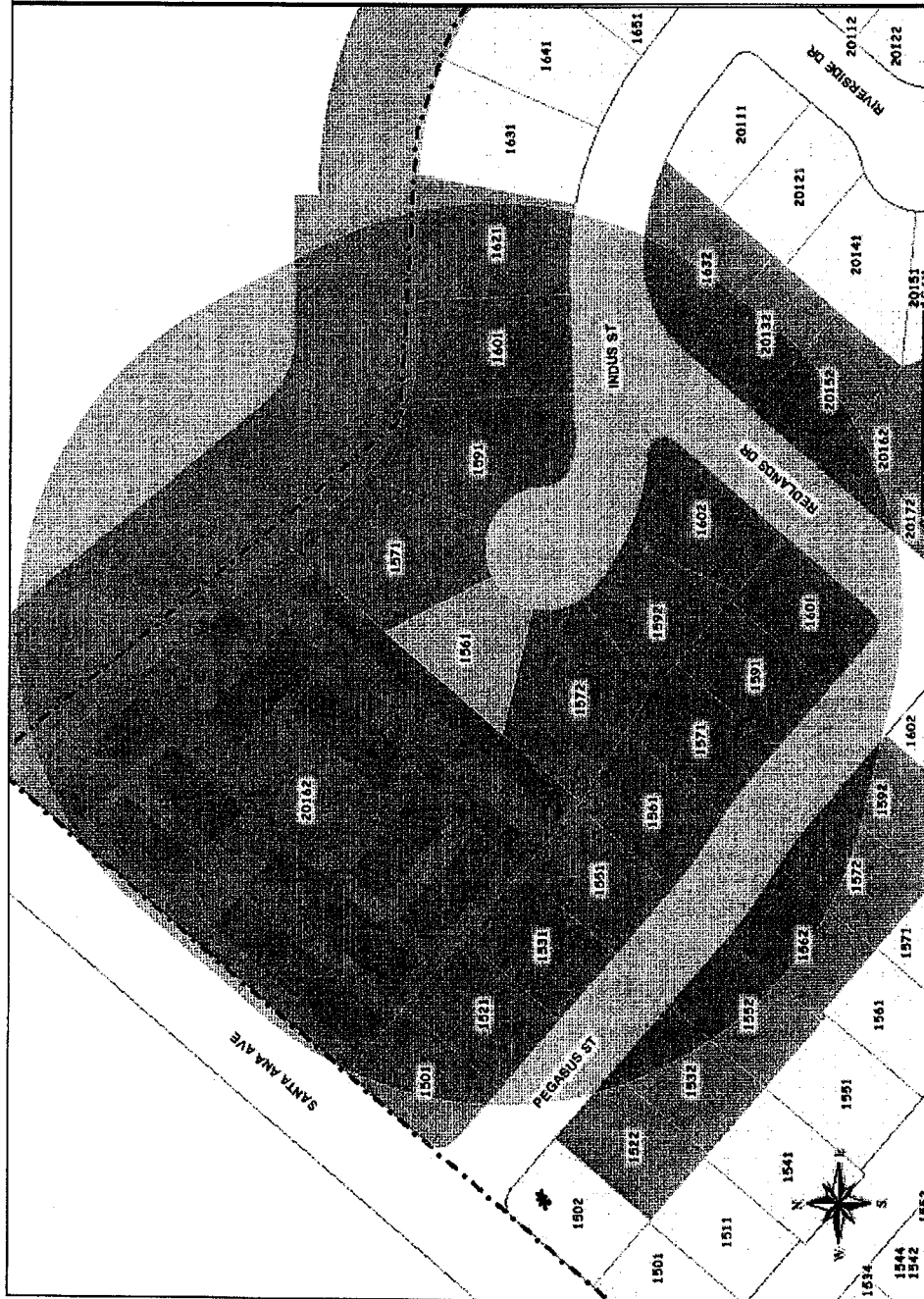
Please see the attached radius map and mailing labels created for properties within a 300-foot radius, excluding roads and waterways for non-residentially zoned properties, of the subject parcel located at 1561 Indus Street in the City of Newport Beach, County of Orange. The property information was acquired through the Newport Beach GIS Web Mapping system. Further, the information is based upon the most up-to-date records of the county tax assessor and is deemed reliable, but is not guaranteed.

  
\_\_\_\_\_  
Signature of Preparer

1-28-09  
\_\_\_\_\_  
Date Prepared

F:\Users\PLN\Shared\PA's\PA's - 2008\PA2008-105\Radius Map and Mailing Labels\UP2008-034  
Preparer's Statement.docx

**Radius Map**  
**1561 Indus Street**  
**PA2008-105 for UP2008-034**





## **AGENDA FOR MARCH 12, 2009 HEARING**

City of Newport Beach  
GROUP RESIDENTIAL USE PERMIT HEARING  
AGENDA



This hearing is held in accordance with Newport Beach Municipal Code Chapter 20.91A (*Use Permits in Residential Districts*).

**DATE:** Thursday, March 12, 2009  
**TIME:** 4:00 p.m. - 6:00 p.m. (Hearing must be concluded or continued by 6 p.m.)  
**LOCATION:** Council Chambers, Newport Beach City Hall @ 3300 Newport Boulevard  
**HEARING OFFICER:** Thomas W. Allen

**AGENDA ITEM #1**

**USE PERMIT No.:** 2008-031 (PA2008-102)  
**APPLICANT:** Ocean Recovery  
**SUBJECT PROPERTY:** 1601 West Balboa Boulevard, Newport Beach

**PROJECT SUMMARY:** An application requesting approval of a Use Permit to allow a residential care facility to operate a licensed adult alcohol and/or drug abuse recovery treatment facility for females only. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. This agenda item allows the Hearing Officer to execute a Resolution of Approval for this facility for 14 beds. This is not a public hearing item.

**AGENDA ITEM #2**

**USE PERMIT No.:** 2008-034 (PA2008-105)  
**REASONABLE ACCOMMODATION No.** 2009-04  
**APPLICANT:** Yellowstone Women's First Step House, Inc  
**SUBJECT PROPERTY:** 1561 Indus Street

**PROJECT SUMMARY:** An application requesting approval of a Use Permit to allow a residential care facility to operate an unlicensed "sober living" facility for 12 women. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. This is a public hearing item.

**AGENDA ITEM #3**

**USE PERMIT No.:** 2008-035 (PA2008-106)  
**REASONABLE ACCOMMODATION No.** 2009-05  
**APPLICANT:** Yellowstone Women's First Step House, Inc  
**SUBJECT PROPERTY:** 1621 Indus Street

**PROJECT SUMMARY:** An application requesting approval of a Use Permit to allow a residential care facility to operate an unlicensed "sober living" facility for 17 women. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. This is a public hearing item.

**AGENDA ITEM #4**

USE PERMIT No.: 2008-036 (PA2008-107)  
REASONABLE ACCOMMODATION No. 2009-06  
APPLICANT: Yellowstone Women's First Step House, Inc  
SUBJECT PROPERTY: 1571 Pegasus Street

**PROJECT SUMMARY:** An application requesting approval of a Use Permit to allow a residential care facility to operate an unlicensed "sober living" facility for 18 women. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. This is a public hearing item.

**AGENDA ITEM #5**

USE PERMIT No.: 2008-037 (PA2008-108)  
REASONABLE ACCOMMODATION No. 2009-07  
APPLICANT: Yellowstone Women's First Step House, Inc  
SUBJECT PROPERTY: 20172 Redlands Drive

**PROJECT SUMMARY:** An application requesting approval of a Use Permit to allow a residential care facility to operate an unlicensed "sober living" facility for 18 men. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. This is a public hearing item.

**AGENDA ACTION**

1. Meeting Convened (Hearing Officer)
2. Agenda Item #1 – Resolution of Approval, Ocean Recovery – 1601 West Balboa (not a public hearing)
3. Agenda Item #2 – Reopened Public Hearing – Yellowstone Women's First Step House, 1561 Indus
  - a) Presentation of the application (Newport Beach city staff)
  - b) Applicant comments, if any
  - c) Public hearing opened (Hearing Officer).
    - i. Comments are limited to comments about the subject property's application and operations; and
    - ii. Comments limited to three minutes, unless otherwise ordered by the Hearing Officer.
  - d) Public hearing closed (Hearing Officer).
  - e) Applicant may offer rebutting or clarifying comments (Applicant).
  - f) Hearing officer's questions of City staff or applicant.
  - g) Hearing Officer determination. Options include continuance, approval of a use permit with conditions or denial of a use permit. In the latter two cases, the Hearing Officer may instruct staff to prepare the Resolution for his signature.
4. Agenda Item #3 – Reopened Public Hearing – Yellowstone Women's First Step House, 1621 Indus

- a) Presentation of the application (Newport Beach city staff)
- b) Applicant comments, if any
- c) Public hearing opened (Hearing Officer).
  - i. Comments are limited to comments about the subject property's application and operations; and
  - ii. Comments limited to three minutes, unless otherwise ordered by the Hearing Officer.
- d) Public hearing closed (Hearing Officer).
- e) Applicant may offer rebutting or clarifying comments (Applicant).
- f) Hearing officer's questions of City staff or applicant.
- g) Hearing Officer determination. Options include continuance, approval of a use permit with conditions or denial of a use permit. In the latter two cases, the Hearing Officer may instruct staff to prepare the Resolution for his signature.

**5. Agenda Item #4 – Reopened Public Hearing – Yellowstone Women's First Step House, 1571 Pegasus**

- a) Presentation of the application (Newport Beach city staff)
- b) Applicant comments, if any
- c) Public hearing opened (Hearing Officer).
  - i. Comments are limited to comments about the subject property's application and operations; and
  - ii. Comments limited to three minutes, unless otherwise ordered by the Hearing Officer.
- d) Public hearing closed (Hearing Officer).
- e) Applicant may offer rebutting or clarifying comments (Applicant).
- f) Hearing officer's questions of City staff or applicant.
- g) Hearing Officer determination. Options include continuance, approval of a use permit with conditions or denial of a use permit. In the latter two cases, the Hearing Officer may instruct staff to prepare the Resolution for his signature.

**6. Agenda Item #5 – Reopened Public Hearing – Yellowstone Women's First Step House, 20172 Redlands**

- a) Presentation of the application (Newport Beach city staff)
- b) Applicant comments, if any
- c) Public hearing opened (Hearing Officer).
  - i. Comments are limited to comments about the subject property's application and operations; and
  - ii. Comments limited to three minutes, unless otherwise ordered by the Hearing Officer.
- d) Public hearing closed (Hearing Officer).

- e) Applicant may offer rebutting or clarifying comments (Applicant).
- f) Hearing officer's questions of City staff or applicant.
- g) Hearing Officer determination. Options include continuance, approval of a use permit with conditions or denial of a use permit. In the latter two cases, the Hearing Officer may instruct staff to prepare the Resolution for his signature.

7. Adjournment (Hearing Officer).

**CEQA:** This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act (CEQA) under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from CEQA's provisions.

**APPEAL PERIOD:** Use Permits do not become effective until 14 days after the date of approval, during which time the decision of the Hearing Officer may be appealed to the City Council.

# # #

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**CITY OF NEWPORT BEACH**  
**HEARING OFFICER STAFF REPORT – MEETING/HEARING SUMMARY**

March 12, 2009

Agenda Items #1-5 SUMMARY

**SUBJECT:** Adoption of Resolution of Approval  
**Ocean Recovery**  
1601 West Balboa (14 beds, women)

- Use Permit No. 2008-031 (PA2008-102)

  
Public Hearings  
**Yellowstone Women's First Step House**  
1561 Indus Street (12 beds, women)

- Use Permit No. 2008-034
- Reasonable Accommodation No. 2009-04

  
1621 Indus Street (18 beds, women)

- Use Permit No. 2008-035
- Reasonable Accommodation No. 2009-05

  
1571 Pegasus Street (18 beds, women)

- Use Permit No. 2008-036
- Reasonable Accommodation No. 2009-06

  
20172 Redlands Drive (17 beds, men)

- Use Permit No. 2008-037
- Reasonable Accommodation No. 2009-07

  
**APPLICANTS:** Ocean Recovery  
  
Yellowstone Women's First Step House, Inc.,  
Isaac R. Zfaty, Attorney  
  
**CONTACT:** Janet Johnson Brown, Associate Planner  
(949) 644-3236, [jbrown@city.newport-beach.ca.us](mailto:jbrown@city.newport-beach.ca.us)

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**MEETING/HEARING SUMMARY**

Today's meetings involve the Hearing Officer's consideration of a Resolution of Approval for a previously-considered (see February 12, 2009 hearing information) Use Permit application for Ocean Recovery at 1601 West Balboa (this is not a public hearing item, but the action will be done in public) along with:

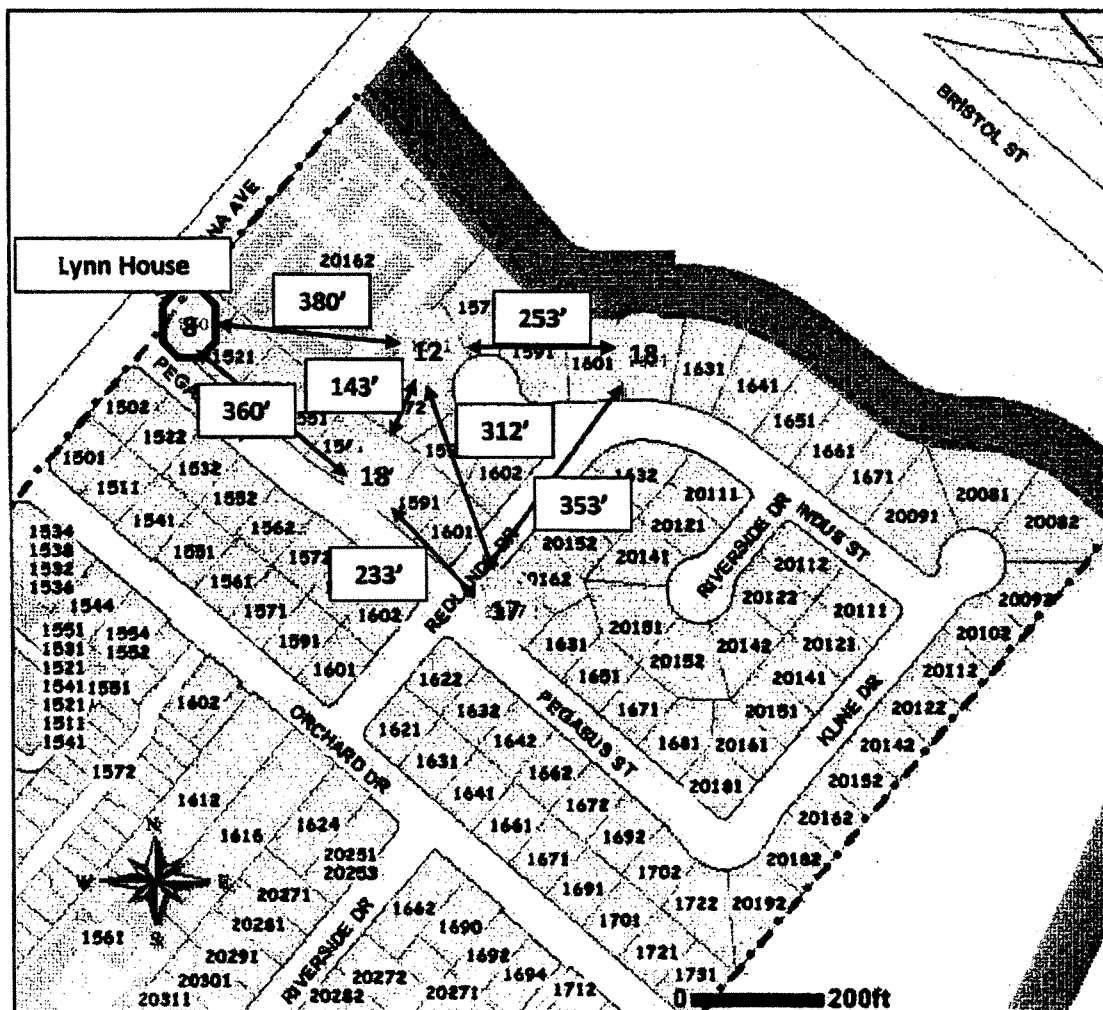
- Use Permit applications for four properties operated by Yellowstone First Step House ("Yellowstone"). All are in West Santa Ana Heights. This is a re-opened public hearing.
- Yellowstone also asked for the Hearing Officer's consideration of "Reasonable Accommodation" from the City's regulations for each of the four homes, specifically relating to:
  1. The residents of the facility being treated as a single housekeeping unit as defined in NBMC §20.03.030;

2. An exemption from the occupancy restrictions of NBMC §20.91A.050, which restricts occupancy to two residents per bedroom plus one additional resident; and
3. An exemption from NBMC §20.90.030 that states applications for discretionary approvals, including use permits, are accompanied by a fee as established by resolution of the City Council.

The Reasonable Accommodation consideration is a continued public hearing.

Yellowstone's four homes (and the location of Lynn House in the same community), along with the City staff's recommendation about each Yellowstone home, are as shown in Map #1 and as shown on Table #1 (Yellowstone's homes are in yellow):

Map #1  
West Santa Ana Heights Group Residential Uses





**Table #1**  
**Group Residential Uses in the West Santa Ana Heights Neighborhood**

No.	Street	Operator	Licensed?	Gender	Beds Now	Recommendation
1571	Pegasus	Yellowstone	No	Women	18	0
1621	Indus	Yellowstone	No	Women	18	0
					73	0

This document attempts to summarize the City's recommendations about Yellowstone. For more detailed analyses of the situation, please see the individual staff reports.

**USE PERMIT RECOMMENDATIONS.** The City generally recommends denying each of the applicant's use permit applications. This is a change from the City's earlier recommendation (approving two and denying two), because the City found that, contrary to the applicant's attorney's assertions, the applicant had not received Use Permits from the County of Orange that would have enabled ANY of the four homes to exist as legal uses prior to the City's annexation of the West Santa Ana Heights area in January, 2008. As a result, the City cannot make at least one (NBMC §20.91A.060, Finding A) of the 11 required findings the City must make if the City is to issue a Use Permit to any of Yellowstone's facilities.

The Finding requires that the use conform of all applicable provisions of NBMC §20.91A.050, including items b and h, as follows:

- b. Facility must comply with state and local law, and the submitted management plan, including any modifications required by this use permit.*
- h. No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.*

**REASONABLE ACCOMMODATION RECOMMENDATIONS.** The City generally recommends:

**Request #1:** That the residents of each facility be treated as part of a single housekeeping unit as defined in §20.03.030 the Newport Beach Municipal Code (NBMC).

**Recommendation & Justification:** Denial. It is clear to the City that the manner in which residents reside in Yellowstone's homes is not like a typical single housekeeping unit. We believe that the nature of applicant's facility operations, as reported in the original application for reasonable accommodation submitted in May 2008, most closely resembles a boarding house use. But for the fact residents are recovering alcoholics, the facility would be classified as a prohibited Group Residential use, or a Boarding or Rooming House as that term is defined in NBMC §20.05.030. (Residential Use Classifications) ("A residence or dwelling unit, or part thereof, wherein a room or rooms are rented under two or more separate written or oral rental agreements, leases or subleases or combination thereof...")

On the May 2008 application for reasonable accommodation, the applicant states, "The residents at the property reside separately at the property and interact within the property. There is individual use of common areas. The residents are responsible for their own meals, expenses and chores. *Each individual resides at the property subject to a separate contractual arrangement with the applicant.*" (Italics added)

Request #2: An exemption from the occupancy restrictions of NBMC §20.91A.050, which restricts occupancy to two residents per bedroom plus one additional resident;

Recommendation and Justification: Approval as to current residents only (and in those cases where a Use Permit is approved). Denial as to prospective residents. Generally, the applicant has asserted that the City's enforcement of the occupancy restrictions in NBMC §20.91A.050 would cause persons in recovery to be denied low-cost housing, and that the persons denied the housing are of limited income whose needs can only be met by Yellowstone. While generally agreeing with that assertion as it relates to current residents, staff made a distinction between current residents of Yellowstone's homes and prospective residents.

Request #3: An exemption from NBMC §20.90.030 that states applications for discretionary approvals, including use permits, are accompanied by a fee as established by resolution of the City Council.

Recommendation and Justification: Denial. Staff believes that the applicant is able to pay the Use Permit application fee, and has offered the applicant a payment schedule to do so.

# # #

**POWERPOINT PRESENTATION FROM MARCH  
12, 2009 HEARING (1 OF 2)**



Use Permit (Re-Opened) &  
Reasonable Accommodation (Continued) Hearings  
Monday, March 12, 2009

## Yellowstone Women's First Step House(s)

1561 Indus Street

1621 Indus Street

1571 Pegasus Street

20172 Redlands Drive

# Today's Hearings (Part I)

- Agenda Items #1 – 1601 West Balboa – Ocean Recovery:
  - Resolution of Approval, 14 beds, other conditions.
  - Not a public hearing item.
- Agenda Items #2-5 – Yellowstone (four homes)
  - Hearing Officer's Consideration of Re-Opening Use Permit Hearing
  - Presentation of Additional Information (Staff)
  - Applicant's Comments
  - Public Hearing Opened
    - Comments limited to 3 minutes unless Hearing Officer determines otherwise
  - Public Hearing Closed
  - Applicant can return to rebut or clarify comments made
  - Questions from the Hearing Officer to the applicant or to City Staff
  - Hearing Officer's determination – alternatives are:
    - Approve with conditions;
    - Deny; or
    - Continue the hearing to a date certain
- Hearing on Reasonable Accommodation Requests (assumed to be consolidated)
  - Same process, separate hearing.

# Today's Hearings (Part II)

- Agenda Items #1-4 – Yellowstone (four homes)
  - Hearing on Reasonable Accommodation Requests (assumed to be consolidated)
    - Brief Background on Chapter 20.98 (Cathy Wolcott)
    - Presentation of Yellowstone's Reasonable Accommodation Requests (Cathy Wolcott) – 1561 Indus, 1621 Indus, 1571 Pegasus, 20172 Redlands
    - Applicant's Presentation (time not limited)
    - Public Hearing Opened
      - Comments limited to 3 minutes unless Hearing Officer determines otherwise
    - Public Hearing Closed
    - Applicant can return to rebut or clarify comments made
    - Questions from the Hearing Officer to the applicant or to City Staff
    - Hearing Officer's determination – alternatives are:
      - Approve request(s)
      - Deny request(s); or
      - Continue the hearing to a date certain

# Staff Presentation

- This is a Use Permit hearing held under NBMC Chapter 20.91(A) – *Use Permits in Residential Districts*
- Following this Hearing (time permitting), we will open a public hearing on three requests for Reasonable Accommodation from the City's regulations – this is a separate public hearing.
- Ordinance 2008-05, effective February 22, 2008, calls out this process:
  - Most existing group residential uses had to apply for a Use Permit to stay in operations by May 22, 2008.
  - A Hearing Officer shall make a determination to approve or deny the Use Permit.
  - The Hearing Officer's decision can be appealed to the City Council.
  - The City Council's decision may not be appealed, but "reasonable accommodation" may be requested. RA requests go before a hearing officer at a public hearing, and can be appealed to the City Council.



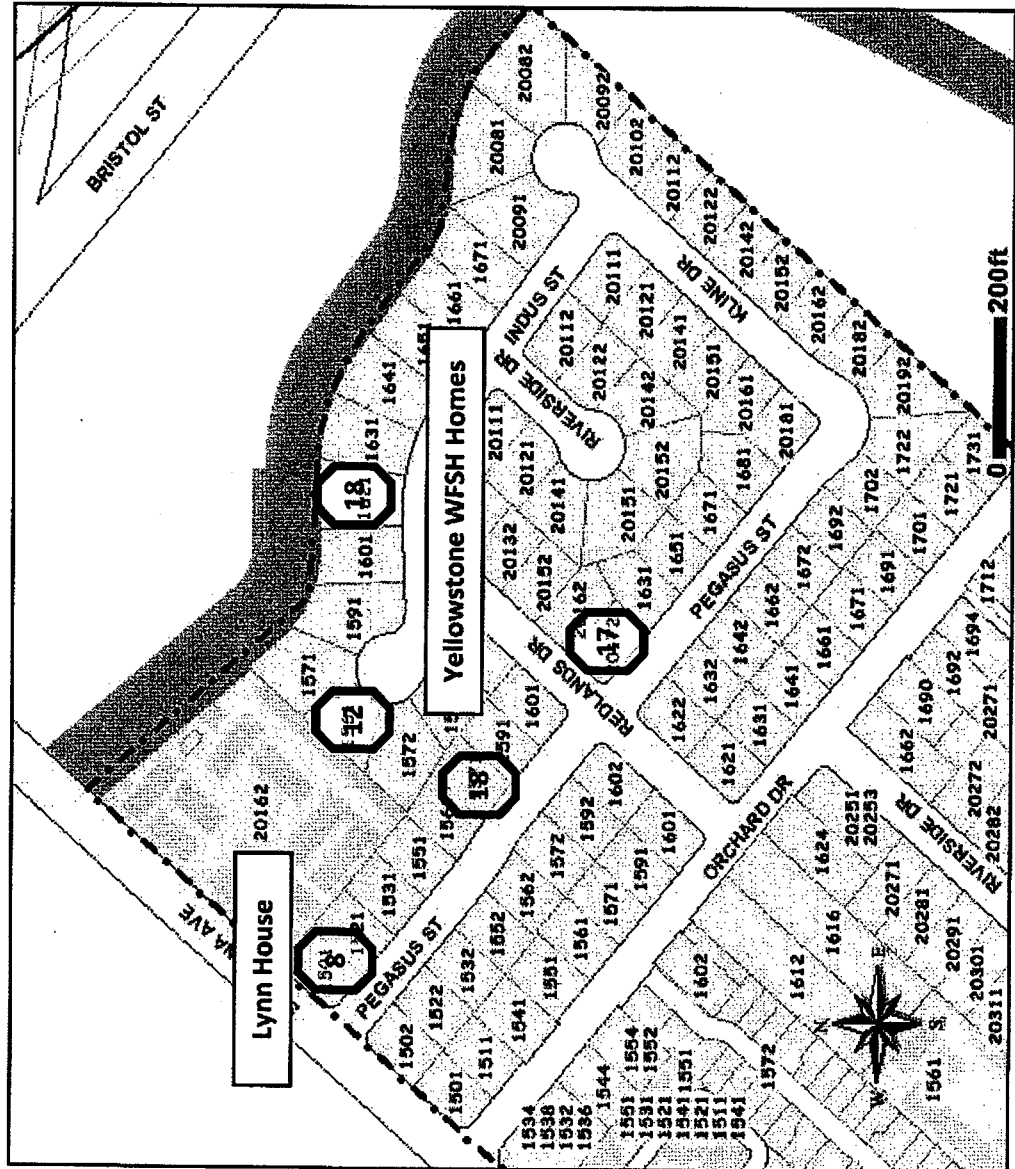
# About Area Facilities

- In the West SAH area, there are at least five group residential uses:

No.	Street	Operator	Licensed?	Gender	Beds Now	Recommendation
1501	Pegasus	Yellowstone	No	Women	18	N/A
1571	Pegasus	Yellowstone	No	Women	18	0
1561	Indus	Yellowstone	No	Women	12	0
1621	Indus	Yellowstone	No	Women	18	0
20172	Redlands	Yellowstone	No	Women	17	0
					73	0

- As shown, four are operated by Yellowstone Women's First Step House.
- Yellowstone WFSH also operates two ADP-licensed facilities in Costa Mesa (15 beds and 6 beds)

# Yellowstone Homes



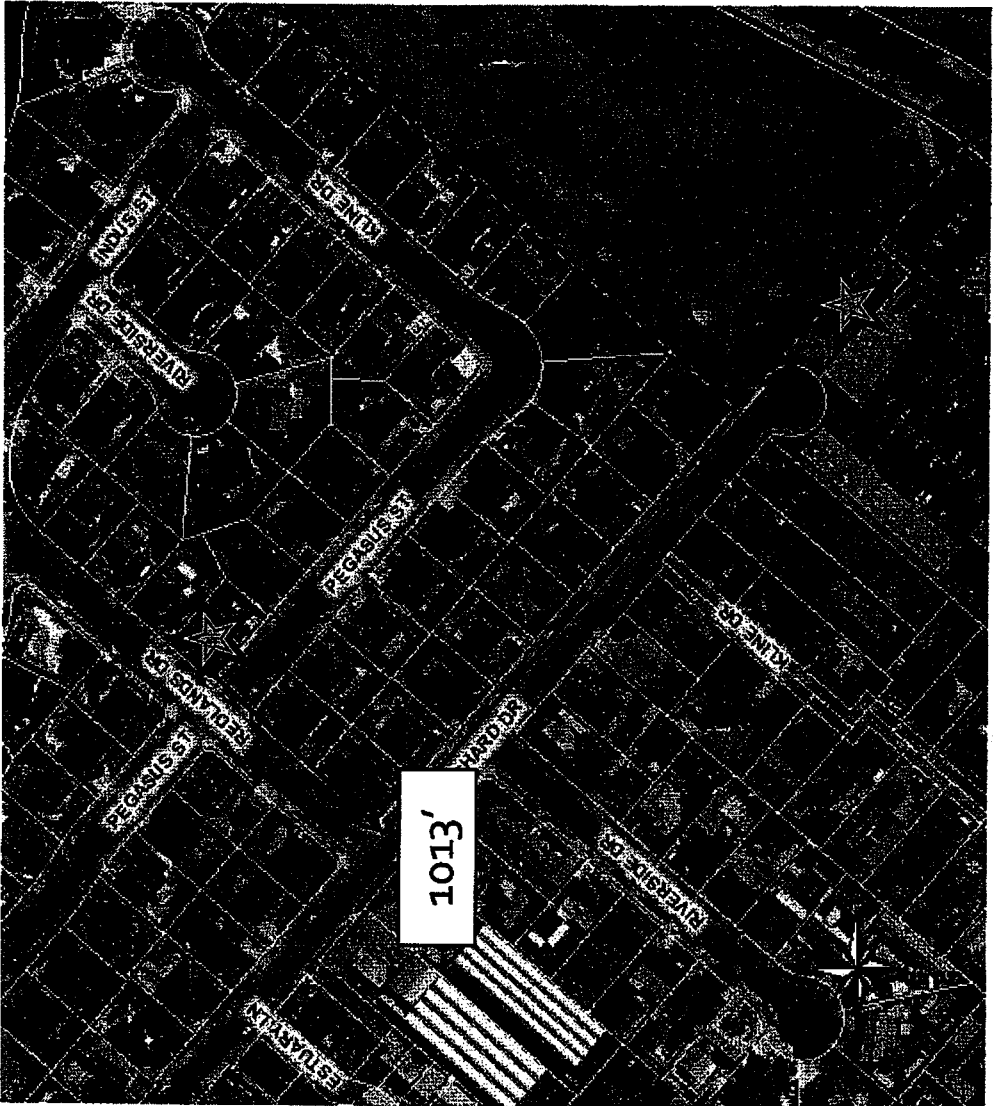
## Concerns that the Ordinance Allows to be Considered

- Allegations made that are specific to these properties. Specifically:
  - Overconcentration in this area. The City believes that at least two of Yellowstone's facilities should close in order to meet the APA standard of "one or two (group residential uses) per block" as set forth in Ordinance 2008-05;
  - Second-hand smoke, more than one would expect if the facility held an identical amount of persons not in recovery;
  - Meetings onsite that do not involve just the clients of each facility (assembly uses are not permitted);
  - Treatment provided on-site, that should only be provided in ADP-licensed facilities;
  - Profanity and/or excessive noise, as well as noise late at night;
  - Inappropriate responses from clients when neighbors attempt to remedy bad interactions, noise concerns, or profanity by themselves;
  - Trash problems – odor, vectors, etc;
  - Lack of quiet hours or curfews, if the lack thereof results in excessive noise; and
  - Quality/capability of on-site supervision.
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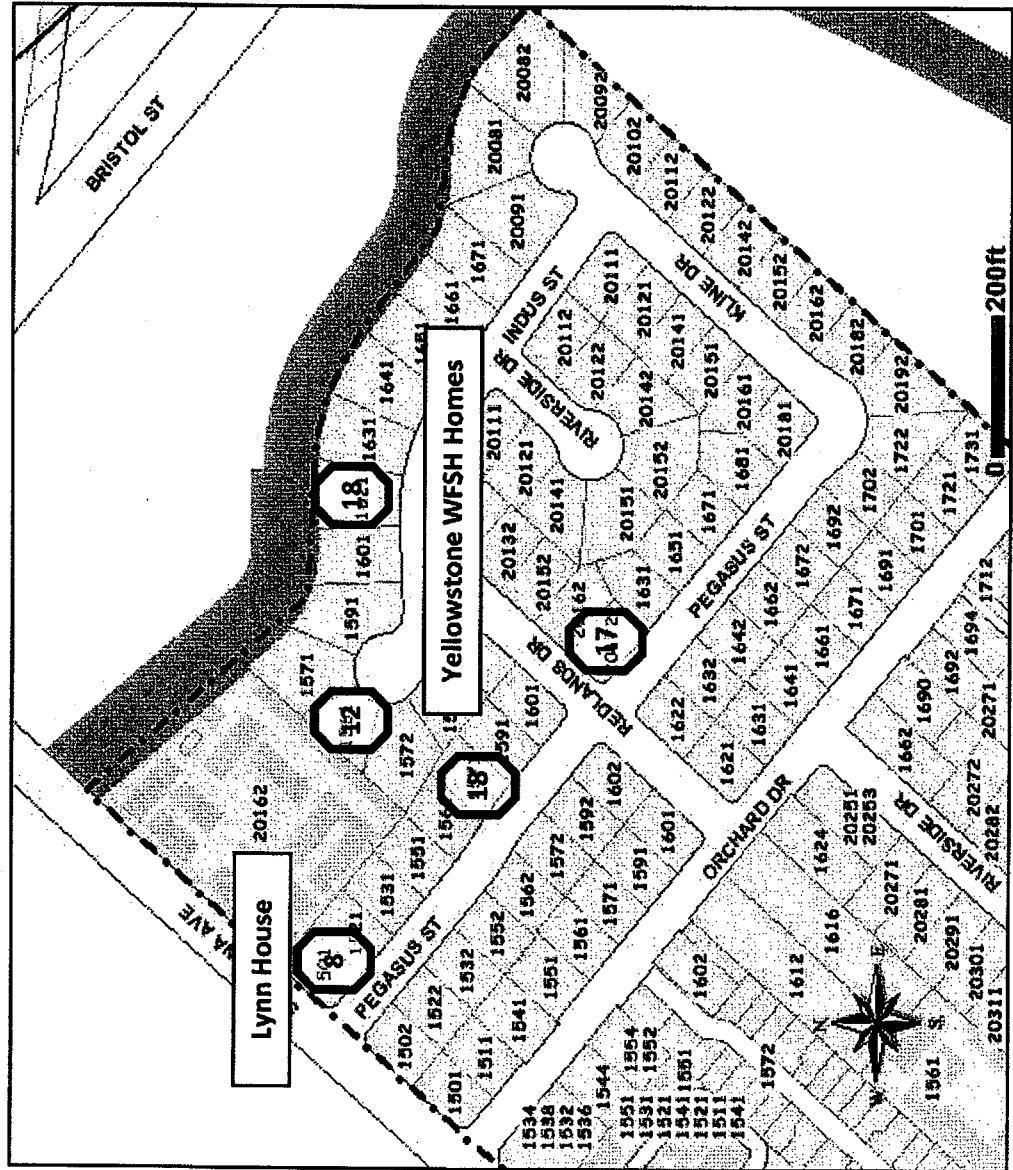
# Concerns we do not or will not consider

- Declining home values. The belief that the presence of recovery facilities is any more impactful on property values than changes in the housing market, long-term rentals, vacation rentals, or other non-single family uses has been challenged nationwide.
- Allegations that recovery homes are a cost burden to the City. There is no evidence to suggest that recovery homes cost the City any more in services than a typical multi-family building housing the same amount of people, whether that is in police or emergency medical calls or other services.
- Allegations that this specific use is too close to the Orchard Drive Park. This use is roughly 1013' away from this park. While the NBMC (§20.91A.060D.1.) allows the hearing officer to consider "the proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which *could be affected by or affect the operation of the subject use* (emphasis added)," there is no evidence on the record that this park affects or is affected by this specific use.
- General comments about recovery homes citywide, without directing specific comments to operations at 1561 Indus, 1621 Indus, 1571 Pegasus, or 20172 Redlands.

# Proximity to Orchard Drive Park



# Yellowstone Homes





# UP Recommendations

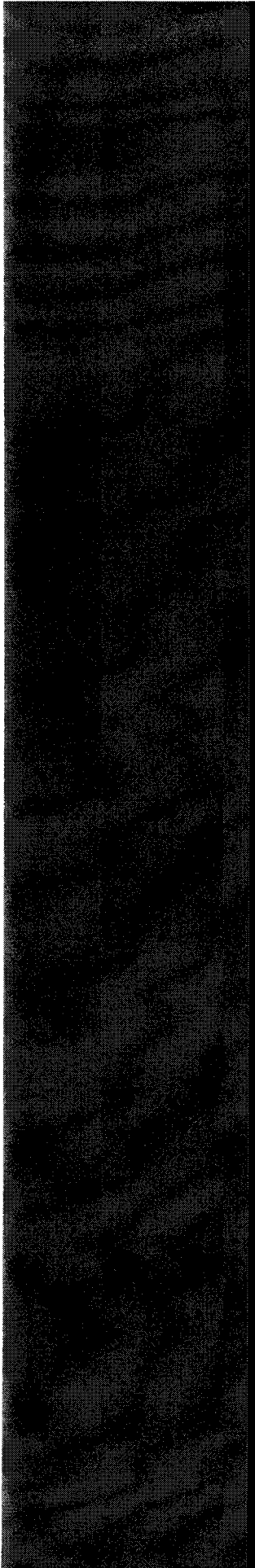
- Deny the uses at:
  - 1561 Indus (women's facility with 12 beds)
  - 1571 Pegasus (women's facility with 18 beds)
  - 1621 Indus (women's facility with 18 beds)
  - 20172 Redlands (men's facility with 17 beds)

# RA Recommendations

- Request #1 – Single Housekeeping Unit
  - Deny.
- Request #2 – Persons per bedroom more than 2 persons + 1.
  - Approve as to current residents only; and
  - Deny for prospective residents, except seek more financial data at 1561 Indus (if UP approved).
- Request #3 – No payment of Use Permit fee
  - Continue matter until more financial information is provided.



**POWERPOINT PRESENTATION FROM MARCH  
12, 2009 HEARING (2 OF 2)**



Use Permit (Re-Opened) &  
Reasonable Accommodation (Continued) Hearings  
Monday, March 12, 2009

## **Yellowstone Women's First Step House(s)**

**1561 Indus Street**

**1621 Indus Street**

**1571 Pegasus Street**

**20172 Redlands Drive**

# Today's Hearings (Part I)

- Agenda Items #1 – 1601 West Balboa – Ocean Recovery:
  - Resolution of Approval, 14 beds, other conditions.
  - Not a public hearing item.
- Agenda Items #2-5 – Yellowstone (four homes)
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    - Approve with conditions;
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- Hearing on Reasonable Accommodation Requests (assumed to be consolidated)
  - Same process, separate hearing.

# Today's Hearings (Part II)

- Agenda Items #1-4 – Yellowstone (four homes)
  - Hearing on Reasonable Accommodation Requests (assumed to be consolidated)
    - Brief Background on Chapter 20.98 (Cathy Wolcott)
    - Presentation of Yellowstone's Reasonable Accommodation Requests (Cathy Wolcott) – 1561 Indus, 1621 Indus, 1571 Pegasus, 20172 Redlands
    - Applicant's Presentation (time not limited)
    - Public Hearing Opened
      - Comments limited to 3 minutes unless Hearing Officer determines otherwise
    - Public Hearing Closed
    - Applicant can return to rebut or clarify comments made
    - Questions from the Hearing Officer to the applicant or to City Staff
    - Hearing Officer's determination – alternatives are:
      - Approve request(s)
      - Deny request(s); or
      - Continue the hearing to a date certain

# Staff Presentation

- This is a Use Permit hearing held under NBMC Chapter 20.91(A) – *Use Permits in Residential Districts*
- Following this Hearing (time permitting), we will open a public hearing on three requests for Reasonable Accommodation from the City's regulations – this is a separate public hearing.
- Ordinance 2008-05, effective February 22, 2008, calls out this process:
  - Most existing group residential uses had to apply for a Use Permit to stay in operations by May 22, 2008.
  - A Hearing Officer shall make a determination to approve or deny the Use Permit.
  - The Hearing Officer's decision can be appealed to the City Council.
  - The City Council's decision may not be appealed, but "reasonable accommodation" may be requested. RA requests go before a hearing officer at a public hearing, and can be appealed to the City Council.

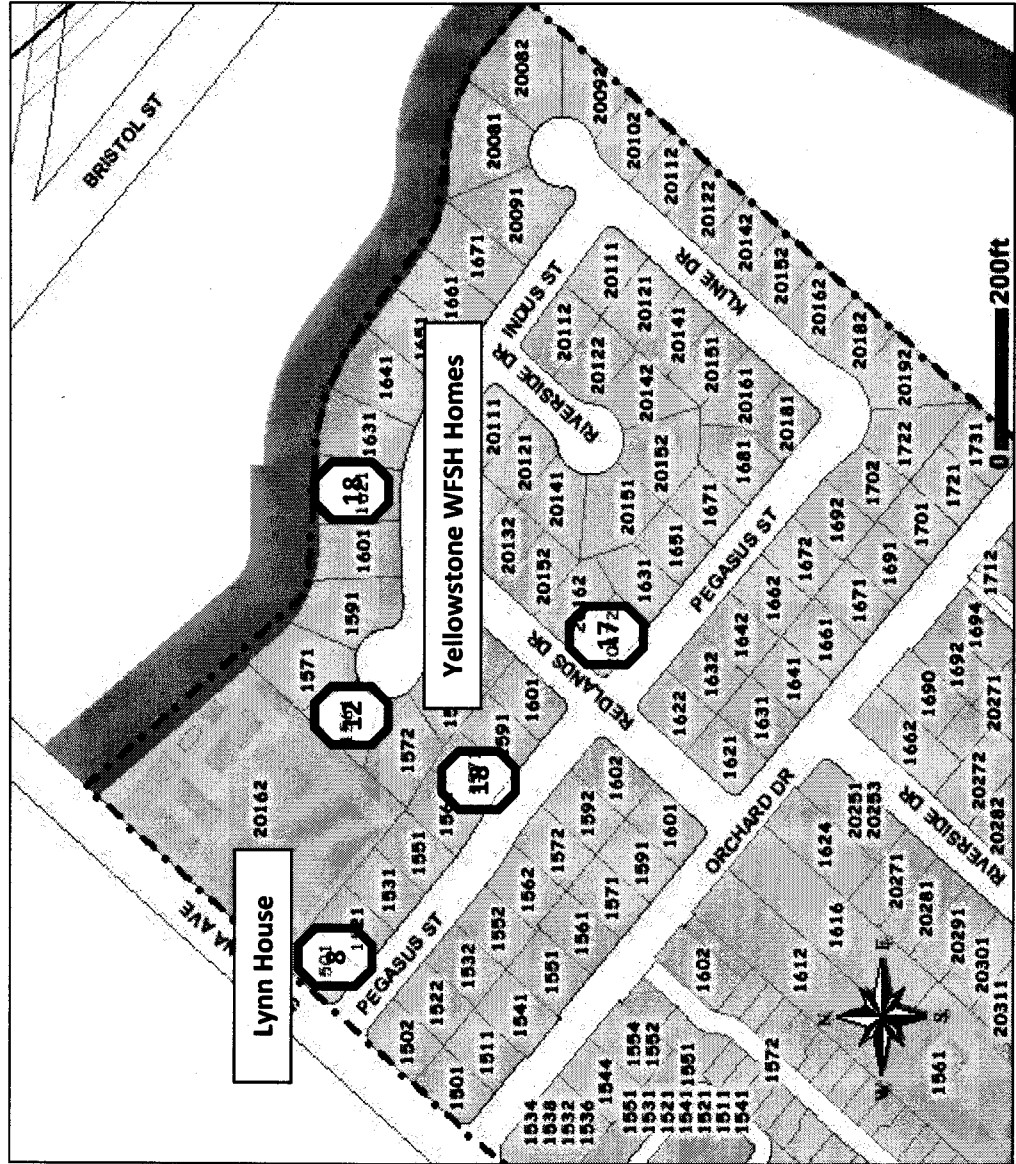
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20172	Redlands	Yellowstone	No	Men	17	0
					73	0

- As shown, four are operated by Yellowstone Women's First Step House.
- Yellowstone WFSH also operates two ADP-licensed facilities in Costa Mesa (15 beds and 6 beds)

# Yellowstone Homes



## Concerns that the Ordinance Allows to be Considered

- Allegations made that are specific to these properties. Specifically:
  - Overconcentration in this area. The City believes that at least two of Yellowstone's facilities should close in order to meet the APA standard of "one or two (group residential uses) per block" as set forth in Ordinance 2008-05;
  - Second-hand smoke, more than one would expect if the facility held an identical amount of persons not in recovery;
  - Meetings onsite that do not involve just the clients of each facility (assembly uses are not permitted);
  - Treatment provided on-site, that should only be provided in ADP-licensed facilities;
  - Profanity and/or excessive noise, as well as noise late at night;
  - Inappropriate responses from clients when neighbors attempt to remedy bad interactions, noise concerns, or profanity by themselves;
  - Trash problems – odor, vectors, etc;
  - Lack of quiet hours or curfews, if the lack thereof results in excessive noise; and
  - Quality/capability of on-site supervision.
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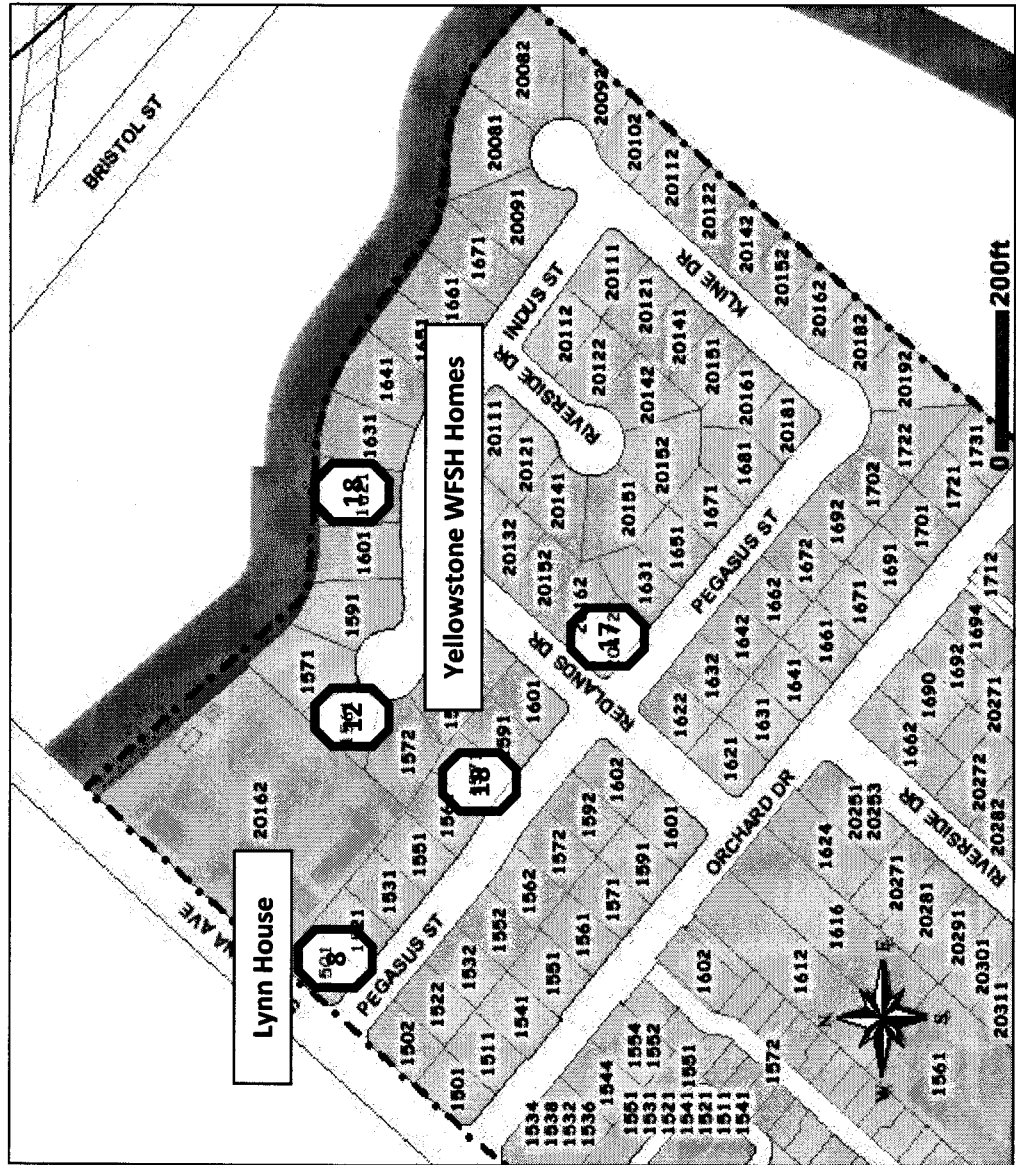
# Concerns we do not or will not consider

- Declining home values. The belief that the presence of recovery facilities is any more impactful on property values than changes in the housing market, long-term rentals, vacation rentals, or other non-single family uses has been challenged nationwide.
- Allegations that recovery homes are a cost burden to the City. There is no evidence to suggest that recovery homes cost the City any more in services than a typical multi-family building housing the same amount of people, whether that is in police or emergency medical calls or other services.
- Allegations that this specific use is too close to the Orchard Drive Park. This use is roughly 1013' away from this park. While the NBMC (§20.91A.060D.1.) allows the hearing officer to consider "the proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which *could be affected by or affect the operation of the subject use* (emphasis added)," there is no evidence on the record that this park affects or is affected by this specific use.
- General comments about recovery homes citywide, without directing specific comments to operations at 1561 Indus, 1621 Indus, 1571 Pegasus, or 20172 Redlands.

# Proximity to Orchard Drive Park



# Yellowstone Homes

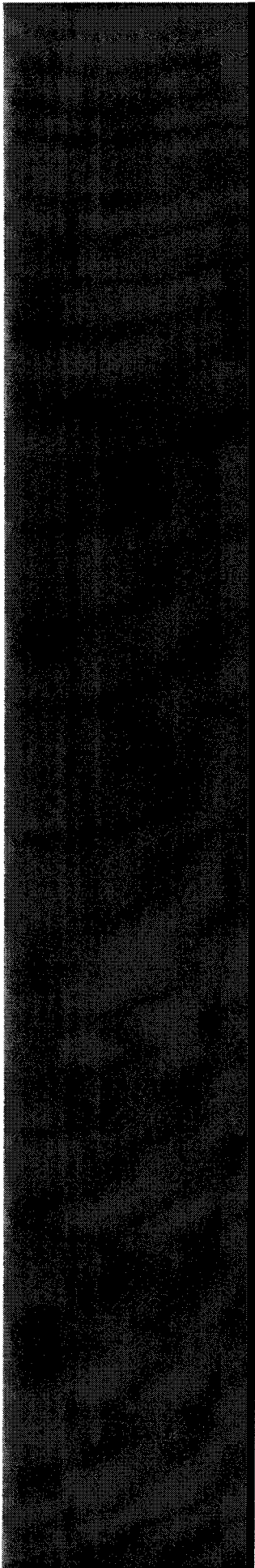


## UP Recommendations

- Deny the uses at:
  - 1561 Indus (women's facility with 12 beds)
  - 1571 Pegasus (women's facility with 18 beds)
  - 1621 Indus (women's facility with 18 beds)
  - 20172 Redlands (men's facility with 17 beds)

## RA Recommendations

- Request #1 – Single Housekeeping Unit
  - Deny.
- Request #2 – Persons per bedroom more than 2 persons + 1.
  - Approve as to current residents only; and
  - Deny for prospective residents.
- Request #3 – No payment of Use Permit fee
  - Deny.



# Reasonable Accommodation

- The federal Fair Housing Amendments Act (FHAA) requires government to make exceptions from usual rules, policies and practices when the request is reasonable, and the exception is necessary to afford a disabled person an equal opportunity to reside in a dwelling.

# Reasonable Accommodation

- Government agency has affirmative duty to grant the requested accommodation if the request is:
  - 1) **Reasonable**, and
  - 2) **Necessary** to afford a disabled person an equal opportunity to live in a dwelling.



## "Reasonable"

Requests are considered **unreasonable** if granting the request would either:

- 1) Impose undue financial or administrative burden on the City, or
- 2) Result in a fundamental change in the nature of a City program.

## "Reasonable", cont'd.

- "Fundamental alteration" also described as "undermining the basic purpose which the requirement seeks to achieve."

## "Necessary"

- Will the accommodation allow the disabled individual to live in the dwelling?
- Would the disabled individual be unable to live in the dwelling without the accommodation?
- Alternative accommodations can be considered.

## Yellowstone Recovery's Requests

- 1) To be treated as a Single Housekeeping Unit, as defined in NBMC Section 20.03.030
- 2) Exemption from occupancy restrictions of two residents per bedroom plus one, required for all use permits issued
- 3) Use permit fee waiver

# #1 – Single Housekeeping Unit

- Single housekeeping units can live in any residential district
- No occupancy restrictions under Zoning Code
- California Building Code restrictions on occupancy apply

## Request #1 Reasonable?

- Request to be treated as SHU is request to be exempt from all restrictions and conditions City might impose to reduce adverse secondary impacts.
- Basic purpose of Ordinance 2008-05 was to mitigate adverse secondary impacts of group residential uses on neighboring properties.

## Request #1 Necessary?

- Would requested accommodation allow disabled persons to live in the dwelling? Yes.
- Would disabled individuals be unable to live in the dwelling without this specific accommodation? No. (Unnecessarily broad exemption)
- Alternative requests which are more reasonable would allow disabled persons to live in the dwelling, with appropriate conditions.

## #2 – Exemption from Use Permit Occupancy Limits

- Request not applicable if use permit not granted.
- If use permit is granted, is the request both reasonable and necessary?
  - As to current residents, yes.
  - As to prospective residents, no.



## Request #2 – Necessary?

- Reported average monthly expense/house = \$6200 (mortgage, utilities, food)
- Fees published on website – average \$170/week
- With 15 residents - \$10,200/month
- With 11 paying residents + two staff (13 total, per NBMC) - \$7,480/month (\$1,280 profit)

## Request #3 – Fee Waiver

- Because it is a nonprofit and raises money from the community to support its programs, Yellowstone has requested a waiver of the standard \$2,200 use permit fee deposit.
- 9<sup>th</sup> Circuit – Some financial constraints directly arising from disability may require accommodation.

## Request #3 – Fee Waiver

Average cost/house - \$6,200/month

Estimated monthly profit, per house:

- 1561 Indus – 10 paying residents - \$6,800 (\$400/month profit)
- 1621 Indus – 16 paying residents - \$10,880 (\$4680/month profit)
- 1571 Pegasus – 16 paying residents - \$10,880 (\$4,680/month profit)
- 20172 Redlands – 15 paying residents - \$10,200 (\$4,000/month profit profit)

## Fee Waiver

- Total estimated profit per month for four houses, with full current occupancy, using expense information supplied by Yellowstone and resident fees posted on Yellowstone's website:

**\$13,760/month**

**1561 INDUS: STAFF REPORT (w/ Attachments 1-7)  
FOR MARCH 12, 2009 HEARING**

# **CITY OF NEWPORT BEACH**

## **HEARING OFFICER'S STAFF REPORT**

March 12, 2009  
Agenda Item 2

**TO:** Thomas W. Allen, Hearing Officer

**SUBJECT:** Yellowstone Women's First Step House, Inc. (PA2008-105)  
1561 Indus Street

- Use Permit No. 2008-034
- Reasonable Accommodation No. 2009-04

**APPLICANT:** Yellowstone Women's First Step House, Inc.  
Isaac R. Zfaty, Attorney

**CONTACT:** Janet Johnson Brown, Associate Planner  
(949) 644-3236, [jbrown@city.newport-beach.ca.us](mailto:jbrown@city.newport-beach.ca.us)

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### **PROJECT SUMMARY**

This is a use permit application to allow the continued operation of an existing unlicensed adult residential care facility at 1561 Indus Street providing a sober living environment with a total occupancy of 12 persons. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. A reasonable accommodation application has also been submitted requesting:

1. The residents of the facility be treated as a single housekeeping unit as defined in Section 20.03.030 the Newport Beach Municipal Code (NBMC);
2. An exemption from the occupancy restrictions of NBMC Section 20.91A.050, which restricts occupancy to two residents per bedroom plus one additional resident; and
3. An exemption from NBMC Section 20.90.030 that states applications for discretionary approvals, including use permits, are accompanied by a fee as established by resolution of the City Council.

### **RECOMMENDATION**

Staff recommends that the Hearing Officer reopen the public hearing, receive testimony from the applicant, the City of Newport Beach and its legal counsel, and members of the public. At the conclusion of the public hearing, staff recommends the Hearing Officer:

1. Deny the use permit application based on the findings discussed in the February 20, 2009, staff report (Attachment 7), and based on new information provided in

this report, and to adopt the attached draft resolution of denial with prejudice of Use Permit No. 2008-034 (Attachment 1)

2. Deny the request for reasonable accommodation for the residents of the facility to be treated as a single housekeeping unit based on the information discussed in this staff report.
3. Deny the requested accommodation for an exemption from the occupancy restrictions of NBMC Section 20.91A.050 as to the current and future residents based on the information discussed in this staff report.
4. Deny the request for reasonable accommodation for an exemption of the application filing fee requirement based on the information discussed in this staff report.

### **INTRODUCTION**

On February 20, 2009, the Hearing Officer conducted the public hearing for Use Permit No. 2008-034, taking testimony from staff, the applicant and members of the public. At the conclusion of the hearing, the Hearing Officer concurred with staff's recommendation to deny the use permit subject to the findings in the staff report (Attachment 7), and directed staff to prepare a resolution for denial with prejudice of Use Permit No. 2008-034. The hearing was continued to March 12, 2009, to take action on the application for Reasonable Accommodation No. 2009-04.

Following testimony by the applicant at the February 20 hearing which characterized the existing sober living use as an established nonconforming use of the property, staff conducted further investigation into the circumstances and laws applicable at the time the facility was established while under the jurisdiction of the County of Orange. Based on new information provided by the County, staff believes one of the findings previously made in the February 20 staff report cannot be made. Therefore, staff recommends the Hearing Officer reopen the hearing in order to consider the additional information contained in this report, and adopt the attached draft resolution to deny with prejudice Use Permit No. 2008-034.

### **BACKGROUND**

The subject property is located in an area referred to as West Santa Ana Heights, which was annexed into the City of Newport Beach effective January 1, 2008. Prior to annexation, West Santa Ana Heights was an unincorporated area under the jurisdiction of the County of Orange. The subject property was located in the Santa Ana Heights Specific Plan area and zoned Residential-Single Family (RSF).

According to information submitted to the City by the applicant, the use of the single family dwelling located at 1561 Indus Street as a sober living facility use was

established in 2007. When the use changed from that of a single family dwelling to a sober living facility, it was subject to any land use regulations the County of Orange placed on such uses at that time.<sup>1</sup> County of Orange Planning Department and Code Enforcement staff informed the City that a sober living use would have been classified as either a community care facility or a congregate care facility.

Applicable Land Use Regulations:

The Santa Ana Heights Specific Plan was adopted by the County in October 1986 and was last revised by the County in 2001. Portions of the Specific Plan are attached as Attachment 2. The property located at 1561 Indus Street was zoned RSF. Principal uses permitted in the RSF district under the Specific Plan are as follows:

1. Single family detached dwellings or single family mobile homes
2. **Community care facilities serving six (6) or fewer persons and large family day care homes.**
3. Parks, playgrounds, and athletic fields.
4. Riding and hiking trails.

A number of additional principal uses not relevant to this analysis, such as communication transmitting facilities, fire and police stations, and churches, were permitted with a use permit or site development permit. Temporary uses and accessory uses were also allowed, some of which required a use permit. All other uses were prohibited.

In addition, the Specific Plan provided, "The following principal uses are permitted subject to the approval of a use permit by the Planning Commission per Zoning Code section 7-9-150: Any other use which the Planning Commission finds consistent with the purpose and intent of this district."

At the time property located at 1561 Indus Street was established as a sober living facility, the County of Orange's Zoning Code definition of community care facility was *"Any facility which may or may not require a State license to provide nonmedical residential care or day care for children, adults, or both, including physically handicapped and mentally incompetent persons. This includes child day care facilities/day care nurseries and family day care homes."*

A congregate care facility was defined as: *"A facility, including a Congregate Living Health Facility as defined in State law, providing care on a monthly basis or longer and which is the primary residence of the people it serves. It provides services to the residents such as the following: dining, housekeeping, security, medical, transportation*

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<sup>1</sup> A change of occupancy for purposes of the California Building Code (CBC) also occurred when the use changed, and to operate legally the structure was required to conform with any CBC requirements for the occupancy type created.



*and recreation. Any commercial services provided are for the exclusive use of the occupants of the facility. Such a facility may be located in more than one building and on contiguous parcels within the building site. It includes facilities offering occupancy on a monthly basis and longer such as hotels, resorts, etc. which have characteristics similar to the above."*

Definitions from the May 2002 version of the County of Orange Zoning Code (in effect in 2007) are attached as Attachment 3.

Section 7-9-141 of the County's 2002 comprehensive Zoning Code further discussed requirements for community care facilities. That section provided:

Community care facilities serving six (6) or less persons and large family day care homes shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single family dwelling or purposes of zoning and land use regulations.

Community care facilities serving seven (7) to twelve (12) persons, except for large family day care homes, shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission per section 7-9-150.

The closest classification provided in County regulations for the unlicensed facility located at 1561 Indus Street appears to be a community care facility. Therefore, if the operators established and maintained the facility with a bed count of six or fewer, it was a permitted use and thus legally established at that occupancy level at that location. If the operator obtained a use permit from the County Planning Commission for seven to 12 residents under the provision of the Specific Plan "other uses which the Planning Commission finds consistent with the purpose and intent of this district," it would also have been a lawfully established use.

The applicant has never indicated to the City that the facility was a community care facility housing six or fewer clients at any time. There are no County records of a use permit being issued for this address, although County Planning employees conducted a thorough search of their records at the request of City staff. On February 26, 2009, County Planning staff informed the City that the only permit they had on record for this address is a permit for re-roofing.

There is documentation from the County (Attachments 4 and 5) that indicates that two other Yellowstone facilities located at 20172 Redlands Drive and 1571 Pegasus Street were likely operating as community care facilities for more than 12 residents (see separate staff reports) without the approval of a use permit granted by the County of Orange Planning Commission. Therefore, Finding A of NBMC Section 20.91A.060 cannot be made with regard to the development and operational standard that "no

owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law," based on the following finding:

All four Yellowstone facilities located in Newport Beach were established when the properties were within the jurisdiction of the County of Orange. County zoning regulations provided that community care facilities housing more than six residents and less than 12 residents were permitted subject to the approval of a use permit granted by the Planning Commission. Per documentation provided by the applicant, the Yellowstone facilities located at 20172 Redlands Drive and 1571 Pegasus Street were established in 2005 (although County records indicate that the Pegasus facility may have been established in 2003), and appeared to be operating community care facilities for more than 12 residents. There is no record of any use permit issued by the County for a community care facility operated by the applicant at any of the four facility locations. This demonstrates a pattern and practice by the applicant of operating community care facilities in violation of local laws in effect at the time the Yellowstone facilities were established. Therefore, this development and operational standard cannot be met and NBMC Section 20.91A.060 Finding A cannot be made.

In addition, staff believes there is some doubt whether the Yellowstone facilities are even qualified to apply for and receive a use permit under NBMC Section 20.62.030 (Determination of Nonconformity). Subsection B of NBMC Section 20.62.030 provides that a use that was lawfully established under the laws in place at the time, but that no longer conforms to the use regulations or required conditions for the district in which is was located because of annexation to the City, shall be deemed to be a nonconforming use. However, *"a use shall not be considered to have been lawfully established and maintained" and is an illegal use if it was established or operated without required permits and licenses, including to not limited to permits and licenses required by any federal, state, or local government agency"* (italics added). Pursuant to NBMC Section 20.91A.020, persons whose use of their property in a residential district was rendered nonconforming by the adoption of Ordinance No. 2008-05 are qualified to seek a use permit to continue the use in its current location. There is no similar provision for illegal uses. Staff believes the facility located at 1561 Indus Street could be more accurately characterized as an illegal use than a nonconforming use as described by NBMC Section 20.62.030 (B).

#### **Use Permit No. 2008-034 Analysis Summary**

In conclusion, staff recommends denial of Use Permit No. 2008-034 for the following reasons:

1. The inability to make all of the findings required by the NBMC Section 20.91.035 (A), and 20.91A.060.
2. The proposed use is not consistent with the purposes of NBMC Section 20.91A as set forth in Section 20.91A.010, and the requirements of Section 20.91.020.

3. There are inconsistencies and/or factual misrepresentations in the application documentation.

This recommendation is based on analysis of the proposed project's submitted documentation, review of the property setting, applicant testimony, apparent documentation contradictions and/or misrepresentations, and staff's conclusion that the required findings from NBMC Section 20.91.035 (A) Findings Nos. 1, 2, 3, and 4 cannot be made, that the required findings from NBMC Section 20.91A.060 Findings A, B and D cannot be made.

If, after reviewing this report, and hearing any further testimony from the applicant, the Hearing Officer agrees with staff's recommendation for denial, staff requests the Hearing Officer adopt the draft resolution for denial with prejudice of Use Permit No. 2008-034.

### **APPLICATIONS FOR REASONABLE ACCOMMODATION**

#### **BACKGROUND**

The background of the applicant's requests for reasonable accommodation is summarized in the February 20, 2009, staff report, attached to this report for reference (Attachment 7). The specific accommodations requested by the applicant are:

1. That the residents of the Yellowstone facility at 1571 Pegasus Street be treated as a single housekeeping unit, as the term is defined in NBMC Section 20.03.030 of the Newport Beach Municipal Code;
2. An exemption from the occupancy restrictions of NBMC Section 20.91A.050, which requires that use permits granted to residential care facilities restrict facility occupancy to no more than two residents per bedroom plus one additional resident; and
3. An exemption from the City's requirement that all use permit applicants pay a use permit application deposit fee to permit cost recovery by the City. (NBMC Chapter 3.36 and NBMC Section 20.90.030)

#### **DISCUSSION**

The federal Fair Housing Amendments Act (FHAA), adopted in 1988, prohibits housing discrimination based on a resident's disability. Under the FHAA, it is discriminatory for government entities to refuse to make reasonable accommodations from rules, policies, and practices when such accommodations may be necessary to afford a person with a disability an equal opportunity to use and enjoy a dwelling (42 U.S.C. § 3604(f)(3)(B)).

Cases interpreting the FHAA have held that a government agency has an affirmative duty to grant a requested reasonable accommodation if: (1) the request is made by or on behalf of a disabled individual or individuals, (2) the accommodation is necessary to afford the disabled applicant an equal opportunity to use and enjoy a dwelling, and (3) the request is reasonable.

Cities may find an accommodation request unreasonable if granting the request would: (1) result in a fundamental alteration in the nature of a City program (often described as "undermining the basic purpose which the requirement seeks to achieve"), or (2) would impose undue financial or administrative burdens on the city (See *U.S. v. Village of Marshall*, 787 F.Supp. 872, 878 (W.D. Wisc. 1991).

Whether a requested accommodation is reasonable and necessary must be determined on a case-by-case basis. *Because the applicant has requested three very different types of reasonable accommodation, staff provided a separate analysis of each specific accommodation request in the February 20 staff report, and will continue to follow that format.*

#### **Reasonable Accommodation Analysis No. 1 – Request to be Treated as a Single Housekeeping Unit**

In the January 29, 2009 letter clarifying applicant's request for reasonable accommodation, the applicant requested that its facility be treated as a Single Housekeeping Unit, as that term is defined in NBMC Section 20.03.030. Staff fully analyzed this request in the February 20 staff report and recommended denial of the request. The denial recommendation was based on the grounds that the accommodation requested was broader than necessary to afford disabled individuals an opportunity to reside in the housing of their choice, and that the request was not reasonable because it would fundamentally alter the nature of this portion of the zoning program, and undermine its basic purpose. For a more in-depth analysis and findings, please see the February 20, 2009, staff report.

#### **SUMMARY**

With regard to the applicant's request to provide reasonable accommodation that treats the facility as a Single Housekeeping Unit, two of the five required findings cannot be made. In accordance with the provisions of Section 20.98.025 of the NBMC, all five findings must be made in order for the Hearing Officer to approve a request for Reasonable Accommodation. Therefore, staff recommends that the Hearing Officer deny the Reasonable Accommodation request for the residents of the subject property to be treated as a Single Housekeeping Unit.

#### **Reasonable Accommodation Analysis No. 2 – Request to be Exempted From Occupancy Standards of NBMC Section 20.91A.050.**

In the January 29, 2009, letter from applicant's counsel's clarifying and supplementing applicant's request for reasonable accommodation, the applicant requested that the facility receive an exemption from the occupancy standards of NBMC Section 20.91A.050. NBMC Section 20.91A.050(C)(2) requires that use permits granted to residential care facilities restrict facility occupancy to no more than two residents per bedroom plus one additional resident.

At the February 20 hearing, staff recommended that a use permit be denied for this facility. Because of new information gathered as a result of testimony by the applicant at the February 20 hearing, staff has recommended that the use permit portion of the hearing be reopened, and that the Hearing Officer deny a use permit for other Yellowstone addresses as well as this facility. If there is no use permit granted for this facility, an exemption from the occupancy restrictions the use permit would have imposed does not need to be analyzed.

In the event the Hearing Officer decides to grant a use permit to this facility after the hearing is reopened, please apply the staff recommendations and findings in the March 12, 2009, staff report for 20172 Redlands Drive to this request.

**Reasonable Accommodation Analysis No. 3 – Request to be Exempted From the City's Use Permit Application Fee Requirement.**

The applicant has stated that, as a non-profit organization that relies on contributions from the community to keep it from operating at a loss, paying the use permit application fee deposit presents a financial hardship. Staff offered a payment plan to enable the applicant to pay the application fee within a reasonable period of time. In lieu of the payment plan, the applicant has requested an exemption from the \$2,200 use permit application deposit required to process the use permit application submitted for this facility.

NBMC Chapter 3.36 sets forth the fee schedule for municipal services, and mandates 100% cost recovery for services when the fee schedule does not set forth a lower rate of recovery. Use permit processing is not one of the services that are generally provided at a rate below 100% cost recovery NBMC Section 20.90.030 states that applications for discretionary approvals, including use permits, shall be accompanied by a fee as established by resolution of the City Council.

Federal courts have periodically reviewed whether the financial limitations of disabled individuals must be considered when analyzing reasonable accommodation requests, with inconsistent results. The Ninth Circuit has indicated that some disability-related financial constraints must be considered when the request is reasonable. As with all reasonable accommodations, the analysis of whether a requested accommodation from financial policies is reasonable must be determined on a case-by-case basis.

The applicant has submitted a signed Affidavit of Disability-Related Financial Hardship that gives general information on the pre- and post-disability average income range of typical facility residents. The applicant has also submitted an unverified statement of the average income and expenses related to the four facility properties, discussed above in Reasonable Accommodation Request No. 2, Finding 2 (C).

Although staff requested further verifiable financial information from the applicant, this information had not been received at the time this report was prepared. Therefore, staff is unable to perform an accurate analysis of the actual financial needs of the applicant at this time.

However, based on the general summary of average expenses for each facility submitted by the applicant for the February 20 hearing, and the weekly client fee range which the applicant posts on its website, staff's analysis indicates that the applicant should have been able to meet the use permit fee obligation.

The average monthly expense for each house is reported by the applicant to be around \$6,200, with an average mortgage of \$4,500/month, \$800/month for utilities (electricity, gas, trash service, water and phone) and \$900/month for food (the May 20, 2008 reasonable accommodation application states that residents are responsible for their own meals; the \$900 may represent basic supplies.) Applicant reports an average monthly expense of \$6,200, leaving only a \$200 monthly profit. Applicant has stated that it relies on contributions from the community to keep it from operating at a loss.

The applicant states that in general, its weekly fees are based on a sliding scale from \$50 to \$160 per week, with an average rent of \$100 per resident per week. With 16 residents (the number of resident clients; facility managers do not appear to pay rent) the applicant reports the average monthly income from each house is \$6,400.

The applicant's statement was not supported by requested documentation (bills, etc. requested by staff), and was not signed under penalty of perjury. Yellowstone's own website indicates that income and expense calculations may be inaccurate. The website's "Our Fees" page (dated 2008) states that fees for sober living are \$160 - \$180 per week. Using the applicant's own reporting formula, this represents an average of \$170 per resident per week. With 16 paying residents (resident staff may not be paying rent), this would result in an average monthly income per house of \$10,880. If the reported average expense of \$6,200 is accurate, each facility housing 16 residents generates a monthly profit of \$4,680. (\$56,160 per year for each house of the three with 16 residents; or an estimated \$168,480 total for the three facilities at 1621 Indus Street, 1571 Pegasus Street and 20172 Redlands Drive.)

**RECOMMENDATION:**

For the foregoing reasons, staff recommends that Reasonable Accommodation Request No. 3 be denied.

Environmental Review

This activity has been determined to be categorically exempt under the requirements of the California Environmental Quality Act under Class 1 (Existing Facilities). This class of projects has been determined not to have a significant effect on the environment and is exempt from the provisions of CEQA. This activity is also covered by the general rule that CEQA applies only to projects that have the potential for causing a significant effect on the environment (Section 15061(b)(3) of the CEQA Guidelines. It can be seen with certainty that there is no possibility that this activity will have a significant effect on the environment and therefore it is not subject to CEQA.

Public Notice

Notice of this Public Hearing was published in the *Daily Pilot*, mailed to property owners and occupants within 300 feet of the project site and posted at the project site a minimum ten (10) days in advance of this Public Hearing consistent with the Newport Beach Municipal Code. In addition, the item appeared on the agenda for this Public Hearing, which was posted at City Hall and on the City website.

Prepared by:

Submitted by:

  
Janet Johnson Brown  
Associate Planner

  
Dave Kiff  
Assistant City Manager

Attachments:

1. Draft Resolution of Denial
2. County of Orange Santa Ana Heights Specific Plan
3. County of Orange Zoning Code Definitions
4. County of Orange Records regarding 20172 Redlands Drive
5. County of Orange Records regarding 1571 Pegasus Street
6. February 20, 2009 Staff Report
7. Correspondence Received After February 20, 2009

***Attachment No. 1***  
***Draft Resolution for Denial***



**RESOLUTION No. \_\_\_\_\_**

**A RESOLUTION OF A HEARING OFFICER OF THE CITY  
OF NEWPORT BEACH DENYING WITH PREJUDICE USE  
PERMIT NO. 2008-034 TO ALLOW AN EXISTING GROUP  
RESIDENTIAL USE TO CONTINUE AT 1561 INDUS  
STREET, NEWPORT BEACH, CALIFORNIA (PA2008-105)**

**WHEREAS**, Ordinance No. 2008-05 was adopted by the Newport Beach City Council on January 22, 2008, following noticed public hearings; and

**WHEREAS**, the adoption of Ordinance No. 2008-05 amended the City of Newport Beach's Municipal Code (NBMC) relating to Group Residential Uses; and

**WHEREAS**, Ordinance No. 2008-05 added Chapter 20.91A to the NBMC. Chapter 20.91A sets forth a process by which existing group residential care facilities, except for state-licensed drug or alcohol treatment homes serving six or fewer clients and not operating integrally with other uses, must apply for use permits to remain in operation beyond February 2009; and

**WHEREAS**, in order to allow an existing group residential care facility to remain in operation, a Hearing Officer must find, following a noticed public hearing, that all four of the findings identified in NBMC §20.91.035 (A) and all seven of the findings identified in §20.91A.060 can be met; and

**WHEREAS**, Yellowstone Women's First Step House, Inc., located at 1561 Indus Street ("Use Location") in Newport Beach, California is an existing group residential care facility operating an unlicensed "sober living" facility for 12 women in an existing single-family dwelling; and

**WHEREAS**, an application was filed by Yellowstone Women's First Step House, Inc. ("Use") pursuant to Ordinance No. 2008-05 within the applicable time period with respect to property located at 1561 Indus Street, and legally described as Lot 14, Tract 4307 in the City of Newport Beach, County of Orange, State of California (APN 119-361-08), as per map recorded in Book 153, Pages 18-20 of Miscellaneous Map, in the Office of the County Recorder of Orange County, requesting approval of Use Permit No. 2008-034 to allow a residential care facility to continue its operations as a 12 bed adult sober living facility for females only; and

**WHEREAS**, on February 20, 2009, a Hearing Officer held a noticed hearing in the City Hall Council Chambers, at 3300 Newport Boulevard, Newport Beach, California at which time the project application was considered. Notice of time, place and purpose of the public hearing was given in accordance with law and testimony was presented to, and considered by, the Hearing Officer at the hearing; and

**WHEREAS**, the hearing was presided over by Thomas W. Allen, Hearing Officer for the City of Newport Beach; and

**WHEREAS**, the existing residential care facility is located in a neighborhood that is not characterized by standard physical characteristics such as typical straight-line grid patterns and instead is comprised of meandering streets and cul-de-sacs, making it difficult to determine block size and configuration; and

**WHEREAS**, utilizing the calculable median block length of 617 feet, an overconcentration of similar uses are located in the vicinity of the Use Location. Proximate to the Use Location are three other residential care facilities operated by Yellowstone Women's First Step House, Inc., and a fourth facility operated by another provider:

1. 20172 Redlands Drive (17 residents), approximately 312 feet away;
2. 1621 Indus Street (18 residents), approximately 253 feet away;
3. 1571 Pegasus Street (18 residents), approximately 143 feet away; and in addition
4. 1501 Pegasus (8 female residents operated by Lynn House), approximately 380 feet away.

**NOW THEREFORE BE IT RESOLVED:**

**Section 1.** That Findings C, and Findings E through G of NBMC §20.91A.060 can be made for the following reasons:

**NBMC 20.91A.060 Finding C: The property and existing structures are physically suited to accommodate the use.**

The subject property is approximately 7,500 square feet in area and the structure consists of approximately 3,197 square feet of living area with a total of five bedrooms. The size of the structure appears adequate to accommodate the use as a residential care facility with 12 beds.

The City of Newport Beach Fire Department is the responsible agency for implementing fire protection of all group residential care facilities and residences. The existing sober living facility has not received a "fire clearance" from the Newport Beach Fire Marshal. Approval of a use permit would include a condition of approval that provides that the use is approved subject to a "fire clearance" issued by the Newport Beach Fire Marshal within six months of the date of conditional approval.

**NBMC 20.91A.060 Finding E: The operation of buses and vans to transport**

**residents to and from off-site activities does not generate vehicular traffic substantially greater than that normally generated by residential activities in the surrounding area.**

Only the resident manager and assistant manager have automobiles. Residents of the facility are not permitted to have automobiles, and utilize public transit from an OCTA bus stop located on Santa Ana Avenue. Vans are used to transport residents to a treatment facility and to a church approximately three to four times a week. The traffic generated from these van trips is not substantially greater than that generated by residential activities in the neighborhood.

**NBMC 20.91A.060 Finding F: Arrangements for delivery of goods are made within the hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.**

Deliveries to the residences are typical of the normal use of the property for residential purposes. Shopping is done by management staff and delivered to the house during normal daytime or early evening hours.

**NBMC 20.91A.060 Finding G: Arrangements for commercial trash collection in excess of usual residential collection are made within hours that are compatible with and will not adversely affect the peace and quiet of neighboring properties.**

The facility utilizes the regularly-scheduled Costa Mesa Sanitary District residential refuse collection services provided throughout the neighborhood. If a use permit were granted for the use, and in the event that the once-a-week trash service does not adequately serve this facility, a condition of approval allowing the Planning Director to require the facility to secure and maintain commercial bin service would be included.

**Section 2.** That Findings Nos. 1, 2, 3, and 4 of NBMC §20.91.035 (A) cannot be made for the following reasons:

**NBMC §20.91.035 (A) Finding No. 1: That the proposed location of the use is in accord with the objectives of this code and the purposes of the district in which the site is located.**

The subject property is located within the Santa Ana Heights Specific Plan (SP-7) area and is designated for Residential Single-Family (RSF) uses. The purpose of the specific plan is to provide for the orderly and balanced development of the community consistent with the stated goals and policies of the Land Use Element of the General Plan. The RSF District is established to provide for the

development and maintenance of medium density single family detached residential neighborhoods, and permit uses that are complementary to and can exist in harmony with such a residential neighborhood. General Plan Policy LU 6.2.7 directs the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods.

The objectives of the code include provisions intended to reduce, through the use permit process, the potential for overconcentration of residential care facilities within a neighborhood and to protect public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use. However, the subject property's close proximity to other residential care facilities, all located within approximately 140 feet to 380 feet from each other, would result in an overconcentration of residential care facilities within the neighborhood.

**NBMC §20.91.035 (A) Finding No. 2: That the proposed location of the use permit and the proposed conditions under which it would be operated or maintained will be consistent with the General Plan and the purpose of the district in which the site is located; will not be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing or working in or adjacent to the neighborhood of such use; and will not be detrimental to the properties or improvements in the vicinity or to the general welfare of the city.**

General Plan Policy LU 6.2.7 directs the City to regulate day care and residential care facilities to the maximum extent allowed by federal and state law so as to minimize impacts on residential neighborhoods. Approval of a use permit for the facility would include conditions of approval regulating the use and operational characteristics related to parking, traffic, curfew hours, and on-site meetings. The facility is located in a neighborhood in which there are currently four other residential care facilities in close proximity, which constitutes an overconcentration of residential care facilities in the immediate vicinity. Therefore, the continued use of this property as a residential care facility, if approved, would be detrimental to the public health, safety, peace, morals, comfort, or welfare of persons residing in the neighborhood, and is contrary to the intention of Ordinance No. 2008-05.

**NBMC §20.91.035 (A) Finding No. 3: That the proposed use will comply with the provisions of this code, including any specific condition required for the proposed use in the district in which it would be located.**

As noted in Finding No. 2 above, the proposed use would not be consistent with the provisions of NBMC Section 20.91A.060.D in that the facility is located in a neighborhood in which there are currently four other residential care facilities.

**NBMC §20.91.035 (A) Finding No. 4: If the use is proposed within a Residential District or in an area where residential uses are provided for in Planned Community Districts or Specific Plan Districts, the use is consistent with the purposes specified in Chapter 20.91A and conforms to all requirements of that Chapter.**

One of the stated purposes of NBMC Section 20.91A.010.B is: *"To protect and implement the recovery and residential integration of the disabled, including those receiving treatment and counseling in connection with dependency recovery. In doing so, the City seeks to avoid the overconcentration of residential care facilities so that such facilities are reasonably dispersed throughout the community and are not congregated or overconcentrated in any particular area so as to institutionalize that area."* The proposed use would not be consistent with this purpose in that the facility is located in a neighborhood in which there are currently four other residential care facilities.

**Section 3.** That Findings A, B and D of NBMC §20.91A.060 cannot be made for the following reasons:

**NBMC §20.91A.060 Finding A: The use conforms to all applicable provisions of Section 20.91A.050. These development and operational standards are summarized as follows:**

**a. No secondhand smoke can be detectable outside the property.**

Smoking is permitted only in the rear yard and patio area. Given the size of the lot and the proximity of the surrounding residential uses, it is unlikely that secondhand smoke can be detected outside the property. Approval of a use permit for the facility would include a condition of approval restricting smoking to an enclosed area, or patio enclosed on all sides and open to above.

**b. Facility must comply with state and local law, and the submitted management plan, including any modifications required by this use permit.**

The facility has been in operation since 2007, and the applicant has stated that the facility has never been cited by a state or local agency as violating any of those agencies' laws or regulations.

**c. A contact name and number must be provided to the City.**

Contact names and telephone numbers have been provided within the application. Approval of a use permit for the facility would include a condition of approval requiring the applicant to provide the City with the appropriate "after hours" names and contact information numbers.

**d. No services requiring a license can be provided if the facility does not have a license for those services.**

The residential care facility is used for housing purposes only and is not licensed for on-site treatment. All treatment services are provided at a site that is located approximately two and a half miles from the site in Costa Mesa. Approval of a use permit for the facility would include a condition of approval limiting attendance of any type of meeting on-site to residents who reside on-site only.

**e. There shall be no more than two persons per bedroom plus one additional resident, unless a greater occupancy is requested and granted. Occupancy must also comply with State licensing if applicable.**

The unlicensed residential care facility has five bedrooms and there is a total occupancy of 12 residents. Therefore, the facility exceeds the standard of two persons per bedroom plus one additional resident by one, and does not comply with this operational standard. While this is in excess of the Code standard, the 12 person occupancy is not excessive and can be accommodated by the structure.

**f. If certification from an entity other than ADP's licensing program is available, applicants must get that certification.**

The facility holds an Oxford House charter, and the applicant has provided proof of that certification.

**g. All individuals and entities involved in the facility's operation and ownership must be disclosed.**

The applicant has provided all names of those involved in the facility's operation within the application.

**h. No owner or manager shall have any demonstrated pattern of operating similar facilities in violation of the law.**

All four Yellowstone facilities located in Newport Beach were established when the properties were within the jurisdiction of the County of Orange. County zoning regulations provided that community care facilities housing more than six residents and less than 12 residents were permitted subject to the approval of a use permit granted by the Planning Commission. Per documentation provided by the applicant, the Yellowstone facilities were established in 2003, 2005 and 2007, and there is no record of any use permit issued by the County for a community care facility operated by the applicant at any of the four facility locations. This demonstrates a pattern and practice by the applicant of operating community care facilities in violation of local laws in effect at the time the Yellowstone facilities were established. Therefore, this development and operational standard cannot be met and NBMC Section 20.91A.060 Finding A cannot be made.

**NBMC §20.91A.060 Finding B: The project includes sufficient on-site parking for the use, and traffic and transportation impacts have been mitigated to a level of insignificance.**

The NBMC requires off-street parking and loading spaces for a residential care facility at a ratio of one space for every three beds. The project site has an enclosed two-car garage and a driveway is that 26 feet deep, providing a total four off-street parking spaces, and therefore meets the NBMC requirements for off-street parking (1:3 or one space per three recovery beds).

Van transportation to an off-site treatment facility and to a church is provided approximately three to four times a week, and residents utilize public transit for commuting to work (an OCTA bus stop is located on Santa Ana Avenue within walking distance).

With respect to traffic generation, the facility itself does not present an adverse impact to the neighborhood. However, there are currently five group residential uses in the neighborhood with a total of 73 residents. Area residents have commented about the traffic and parking impacts from family and other visitors to the site during evening hours and on weekends, which results in cars parked throughout the vicinity. The project site is located at the end of a cul-de-sac, and the lots are pie-shaped, with smaller street frontages than other lots within the tract. Further complicating the on-street parking issue for the cul-de-sac lots is the fact that the driveway cuts/aprons do not leave ample space for the parking of vehicles directly in front of the houses. Other lots located in the tract have room to park two to three cars directly in front of the houses.

In summary, while the facility does provide the code-required number of off-street parking, the traffic and parking impacts on the surrounding neighborhood cannot be mitigated to an insignificant level, particularly given the limited parking due to

the location of the site on a cul-de-sac, and due to the presence of other group care homes in close proximity to the subject property.

**NBMC §20.91A.060 Finding D:** The use will be compatible with the character of the surrounding neighborhood, and the addition or continued maintenance of the use will not contribute to changing the residential character of the neighborhood, such as creating an overconcentration of residential care uses in the vicinity of the proposed use. In making this finding or sustaining such a finding, the Hearing Officer shall consider, as appropriate, the following factors:

- a. The proximity of the use location to schools, parks, other residential care facilities, outlets for alcoholic beverages and any other uses which could be affected by or affect the operation of the subject use;
- b. The existence of substandard physical characteristics of the area in which the use is located such as lot widths, setbacks, narrow streets, limited available parking, short blocks, and other substandard characteristics which are pervasive in certain areas of the City of Newport Beach, including portions of West Newport, Lido Isle, Balboa Peninsula, Balboa Island, Corona del Mar and Newport Heights, which portions were depicted on a map referred to as the Nonstandard Subdivision Area presented to the Newport Beach Planning Commission on September 20, 2007 and on file with the Director of Planning; and
- c. Whether, in light of the factors applied in subsections 20.91A.D.1 and D.2, it would be appropriate to apply the American Planning Association standard of permitting one or two such uses per block. Median block lengths in different areas of Newport Beach widely range from 300 feet in the Nonstandard Subdivision Areas to as much as 1,422 feet in standard subdivision areas. The average calculable block length in much of the standard subdivision areas is 711 feet and the calculable median block length is 617 feet. The Hearing Officer shall apply the American Planning Association standard in all areas of Newport Beach in a manner that eliminates the differences in block lengths. In making this determination, the hearing officer shall be guided by average or median block lengths in standard subdivisions of the City. The Hearing Officer shall retain the discretion to apply any degree of separation of uses, which he or she deems appropriate in any given case. A copy of the American Planning Association standard is on file with the Director of Planning.



The project site is located within an established single-family residential neighborhood consisting of one and two story tract homes. There are no public or private schools, or public parks located within close proximity to the site. The closest elementary school is Kaiser Elementary School, which is located approximately two miles to the south, and Brentwood Park located approximately one and a half miles to the south. Facilities licensed to sell or serve alcohol located within three blocks of the project site include a 7-11 Store, and a restaurant on the southeast corner of Santa Ana Avenue and Bristol Street, and an AM/PM Service Station and Market on the northeast corner of Santa Ana Avenue and Bristol Street. Those facilities are located within the City of Costa Mesa, approximately 2,000 feet or more walking distance from the subject property.

The subject property is located in a neighborhood that is not characterized by standard physical characteristics such as a typical street grid pattern; but instead has meandering streets and cul-de-sacs. The ordinance recognizes that there are instances when the lack of straight-line grid pattern streets make it difficult to exactly define a block; and also recognizes that blocks throughout the City are not always uniform in size. In those instances, Code Section 20.91A.060.D.3 provides that the Hearing Officer may apply the American Planning Association (APA) of permitting one or two such uses per block and utilize the standard of 617 feet (median) or 711 feet (average) block lengths in Newport Beach in determining the block size and configuration.

Utilizing the median block length of 617 feet places all five existing group residential uses within a single block area, because the maximum distance between each of the facilities is less than 600 feet. Therefore, the Hearing Officer finds that the subject property is located within a block currently containing five group homes and a total of 73 residents residing in residential care facilities. The presence of this many residential care facilities in very close proximity to each other creates an overconcentration residential care facilities. The use of the subject property as a residential care facility results in an overall adverse impact on the neighborhood and is not compatible with the character of the surrounding neighborhood.

**Section 4.** The Hearing Officer hereby denies with prejudice Use Permit No. 2008-034.

**Section 5.** The action shall become final and effective fourteen (14) days after the adoption of this Resolution unless within such time an appeal is filed with the City Clerk in accordance with the provisions of Title 20, Planning and Zoning, of the Newport Beach Municipal Code.

**PASSED, APPROVED, AND ADOPTED this 12th day of March, 2009.**

By: \_\_\_\_\_  
Thomas W. Allen, Hearing Officer

**ATTEST**

\_\_\_\_\_  
**CITY CLERK**

***Attachment No. 2***  
*County of Orange*  
*Santa Ana Heights Specific Plan*

**SANTA ANA HEIGHTS  
SPECIFIC PLAN**  
*Seventh Amendment*

**PREPARED BY:**

**Environmental & Project Planning Services Division**

**County of Orange**

**Planning & Development Services Department**  
**Tom Mathews, Director**

Adopted October 1986  
1<sup>st</sup> Revised March 1988  
2<sup>nd</sup> Revised December 1989  
3<sup>rd</sup> Revised May 1991  
4<sup>th</sup> Revised August 1996  
5<sup>th</sup> Revised November 1999  
6<sup>th</sup> Revised September 2000  
7<sup>th</sup> Revised January 2001

# SANTA ANA HEIGHTS SPECIFIC PLAN

## 4. RSF "Residential Single Family" District

### a. Purpose and Intent

The RSF District is established to provide for the development and maintenance of medium density single family detached residential neighborhoods. Only those uses are permitted that are complementary to and can exist in harmony with such a residential neighborhood.

### b. Principal Uses Permitted

#### (1) The following principal uses are permitted:

- (a) Single family detached dwellings or single family mobile homes per Zoning Code section 7-9-149.5 (one per building site).
- (b) Community care facilities serving six (6) or fewer persons and large family day care homes.
- (c) Parks, playgrounds, and athletic fields (noncommercial).
- (d) Riding and hiking trails.

#### (2) The following principal uses are permitted subject to the approval of a site development permit per Zoning Code section 7-9-150:

- (a) Communication transmitting, reception, or relay facilities.
- (b) Public/private utility buildings and structures.

#### (3) The following principal uses are permitted subject to the approval of a use permit by the Zoning Administrator per Zoning Code Section 7-9-150:

- (a) Fire and police stations.
- (b) Churches, temples and other places of worship.

#### (4) The following principal uses are permitted subject to the approval of a use permit by the Planning Commission per Zoning Code section 7-9-150:

- (a) Any other use which the Planning Commission finds consistent with the purpose and intent of this district.

### c. Temporary Uses Permitted

The following temporary uses only, per Zoning Code section 7-9-136:

- (1) Continued use of an existing building during construction of a new building.
- (2) Mobile home residence during construction.

### d. Accessory Uses Permitted

Accessory uses and structures are permitted when customarily associated with and subordinate to a principal permitted use on the same building site per Zoning Code section 7-9-137, to include:

- (1) Garages and carports.
- (2) Swimming pools.
- (3) Fences and walls.

# SANTA ANA HEIGHTS SPECIFIC PLAN

- (4) Patio covers.
- (5) Signs per Zoning Code section 7-9-111.
- (6) Six (6) square feet of sign area maximum unless otherwise provided for by an approved site development permit or use permit.
- (6) Home occupations per Zoning Code section 7-9-146.6.
- (6) Noncommercial keeping of pets and animals weighing less than three hundred (300) pounds and not prohibited in section (e), subject to the following standard. Pens, cages, and other structures specifically for the keeping of animals other than in the residence, shall be located at least twenty-five (25) feet from any residential window located on an adjoining building site. Exceptions to the above may be provided for by a use permit approved by the County Zoning Administrator.
- (7) Non commercial keeping of horses on land immediately adjacent to the Recreation Equestrian District (REC) provided that no horse shall be permitted on a building site containing less than ten thousand (10,000) square feet of land area and pens, cages, and other structures specifically for the keeping of horse shall be located at least fifty (50) feet from and residential window located on an adjoining building site. One (1) or two (2) adult horses are permitted on a building site containing between ten thousand (10,000) and fifteen thousand (15,000) square feet of land area. One (1) additional adult horse may be kept for each additional ten thousand (10,000) square feet, with a maximum of six (6) horses on any one building site. The offspring of such animals shall be considered adults when eight (8) months old. Exceptions to the above may be provided for by a

- use permit approved by the County Zoning Administrator.
- Any nonconforming use of any property within this zone for the maintenance of pets and animals other than those enumerated in this section shall be terminated within one year of the enactment of this section. In any case in which a building in excess of 600 square feet has been erected pursuant to a validly issued permit for maintenance of pets and animals the amortization period of continuation of such use shall be extended for four additional years.
- (8) Second living unit, attached or detached, in conformance with Zoning Code Section 7-9-146.5, subject to approval of a use permit.
  - (9) Any other accessory use or structure which the Director, PDS/D finds consistent with the purpose and intent of this district.

## e. Prohibited Uses

The following uses are specifically prohibited:

- (1) All uses not permitted by section b through d above.
- (2) The storage of vehicles, equipment, or products related to a commercial activity not permitted in this district.
- (3) The keeping of animals for any commercial purpose unless provided for by an approved use permit.
- (4) Apiaries.

## Land Use District Regulations

IV-14

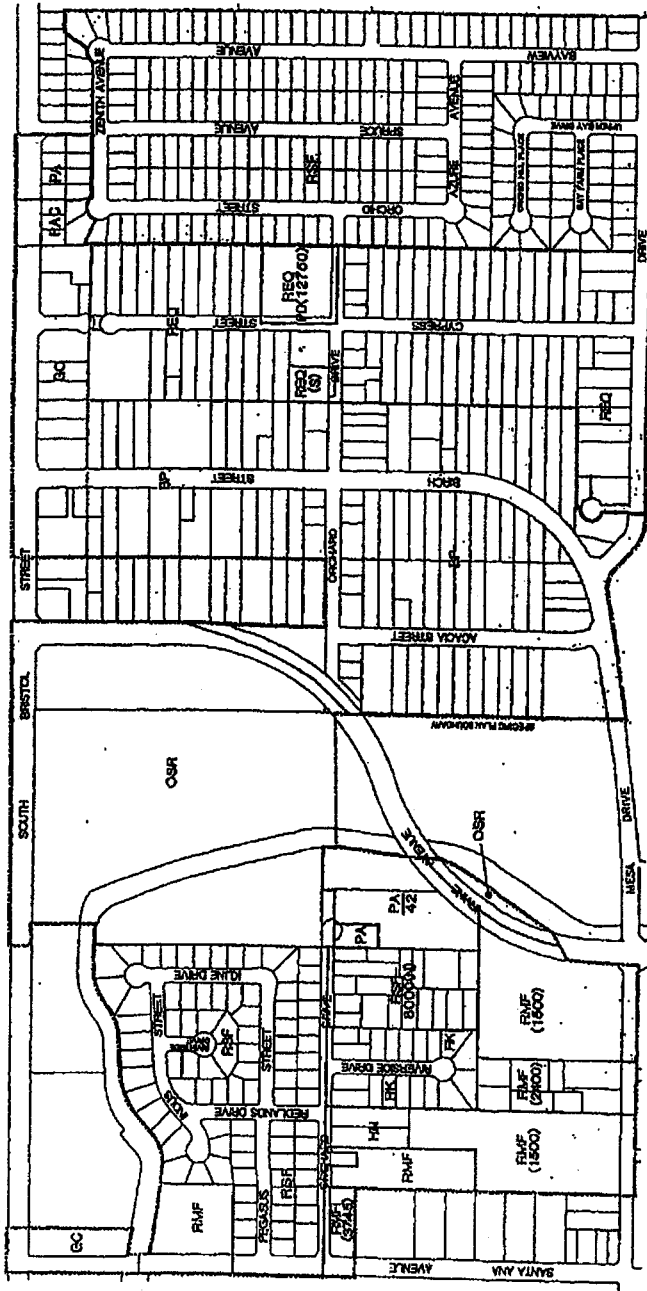
**SANTA ANA HEIGHTS  
SPECIFIC PLAN**

**f. Site Development Standards**

- (1) Building site area. Seven thousand and two hundred (7,200) square feet minimum except as otherwise identified on the Land Use District map.
- (2) Building height. Thirty-five (35) feet maximum. Roof-mounted mechanical equipment shall not be visible from any existing dwelling unit located three hundred (300) feet or less from the subject building site.
- (3) Building setbacks.
  - (a) Front setback. Twenty (20) feet minimum.
  - (b) Side setback. Five (5) feet minimum.
  - (c) Rear setback. Twenty-five (25) feet minimum.
- (4) Off-street parking. Per Zoning Code section 7-9-145.
- (5) Lighting. All lighting shall be designed and located so that direct light rays are confined to the premises.

**IV-15**

**Land Use District Regulations**

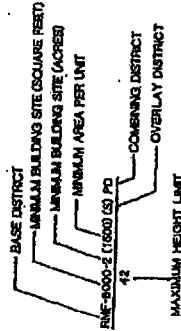


- Seventh Amendment**
- OSR OPEN SPACE/RECREATION
  - REC RESIDENTIAL EQUESTRIAN
  - REK RESIDENTIAL KENNEL
  - RES RESIDENTIAL SINGLE FAMILY
  - RMF RESIDENTIAL MULTIPLE FAMILY
  - RNF RESIDENTIAL NURSERY
  - GC GENERAL COMMERCIAL
  - BP BUSINESS PARK
  - PA PROFESSIONAL AND ADMINISTRATIVE OFFICE
  - PAC PROFESSIONAL AND ADMINISTRATIVE CONSOLIDATION
  - PD PLANNED DEVELOPMENT
  - CS COMMERCIAL STABLE
  - CN COMMERCIAL NURSERY

Zone Change ZC 00-05

- GC GENERAL COMMERCIAL
- BP BUSINESS PARK
- PA PROFESSIONAL AND ADMINISTRATIVE OFFICE
- PAC PROFESSIONAL AND ADMINISTRATIVE CONSOLIDATION
- PD PLANNED DEVELOPMENT
- CS COMMERCIAL STABLE
- CN COMMERCIAL NURSERY

# **LAND USE DISTRICT MAP** SANTA ANA HEIGHTS SPECIFIC PLAN



ACCEPTED FOR THE  
PLANNING AND DEVELOPMENT SERVICES  
DEPARTMENT  
DATE: April 30, 2001  
TIME: 2:45 P.M. RES. DESK  
INSTRUMENT: 20010430-000-001  
BOOK: 7 PAGE: 30  
COUNTY CLERK - RECORDER  
P. [Signature]

WE HEREBY CERTIFY THAT THIS  
LAND USE DISTRICT MAP  
WAS APPROVED BY THE ORANGE  
COUNTY PLANNING COMMISSION IN DECEMBER 2000  
AND ADOPTED BY ORDINANCE NO. 00-131  
BY THE ORANGE COUNTY BOARD OF SUPERVISORS  
ON JANUARY 23, 2001

[Signature]  
BY THOMAS E. HATHENS  
DIRECTOR OF PLANNING  
AND DEVELOPMENT SERVICES  
DEPARTMENT



***Attachment No. 3***  
*County of Orange*  
*Zoning Code Definitions*

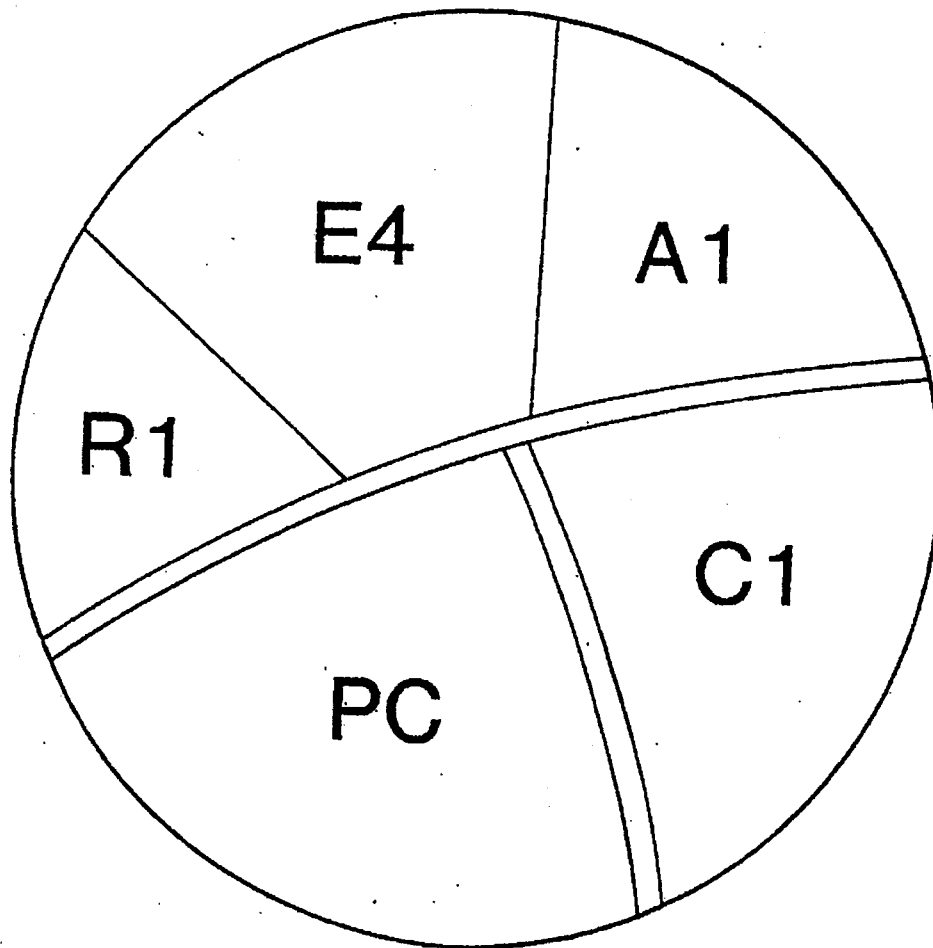


RECEIVED BY  
PLANNING DEPARTMENT  
CITY OF NEWPORT BEACH

MAR 11 2003

AM PM  
7,8,9,10,11,12,1,2,3,4,5,6

# COUNTY OF ORANGE ZONING CODE



Planning and Development Services Department  
May, 2002 Edition

Community care facility: Any facility which may or may not require a State license to provide nonmedical residential care or day care for children, adults, or both, including physically handicapped and mentally incompetent persons. This includes child day care facilities/day care nurseries and family day care homes.

Community facility: A noncommercial use established primarily for the benefit or enjoyment of the population of the community in which it is located.

Condominium: An estate consisting of an undivided interest in common in a parcel of real property together with a separate interest in space in a residential, industrial or commercial building on such real property, such as an office or store or multifamily dwelling. A condominium may include, in addition, a separate interest in other portions of such real property.

Congregate care facility: A facility, including a Congregate Living Health Facility as defined in State law, providing care on a monthly basis or longer and which is the primary residence of the people it serves. It provides services to the residents such as the following: dining, housekeeping, security, medical, transportation and recreation. Any commercial services provided are for the exclusive use of the occupants of the facility.

Such a facility may be located in more than one building and on contiguous parcels within the building site. It includes facilities offering occupancy on a monthly basis and longer such as hotels, resorts, etc. which have characteristics similar to the above.

Convalescent home: A facility licensed by the State Department of Health Services which provides bed and ambulatory care for more than six (6) patients with postoperative convalescent, chronically ill or dietary problems and persons unable to care for themselves; including persons undergoing psychiatric care and treatment both as inpatients and outpatients but not including persons with contagious diseases or afflictions. Also known as nursing home, convalescent hospital, rest home, or home for the aged.

Conversion project: An apartment house, multiple or group dwelling existing, under construction or for which building permits have been issued, which is proposed for conversion to a residential condominium, community apartment, residential stock cooperative or planned development; or an existing mobilehome park which is proposed to be converted to a mobilehome condominium project, a mobilehome stock cooperative project, a mobilehome planned development or a conventional mobilehome subdivision.

#### **Sec. 7-9-25. Definitions. (D)**

Day (care) nursery: A.k.a. child day care facility and day care center. Any facility operated by a person, corporation or association used primarily for the provision of nonmedical daytime care, training, or education of more than six (6) children under eighteen (18) years of age at any location other than their normal place of residence, excluding any children normally residing on the premises.

Detached buildings and structures: Two (2) or more buildings or structures that are each structurally independent and freestanding and not connected by walls, roofs, floors, decks, supports, trellises, architectural features or any other structure, fixture or device that exceeds thirty (30) inches in height above the finished grade.

**Sec. 7-9-141. Community Care Facilities.**

Community care facilities serving six (6) or less persons and large family day care homes shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single family dwelling for purposes of zoning and land use regulations.

Community care facilities serving seven (7) to twelve (12) persons, except for large family day care homes, shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission per section 7-9-150.

**Sec. 7-9-141.1. Reserved.**

**Sec. 7-9-141.2. Child care facilities/day care nurseries.**

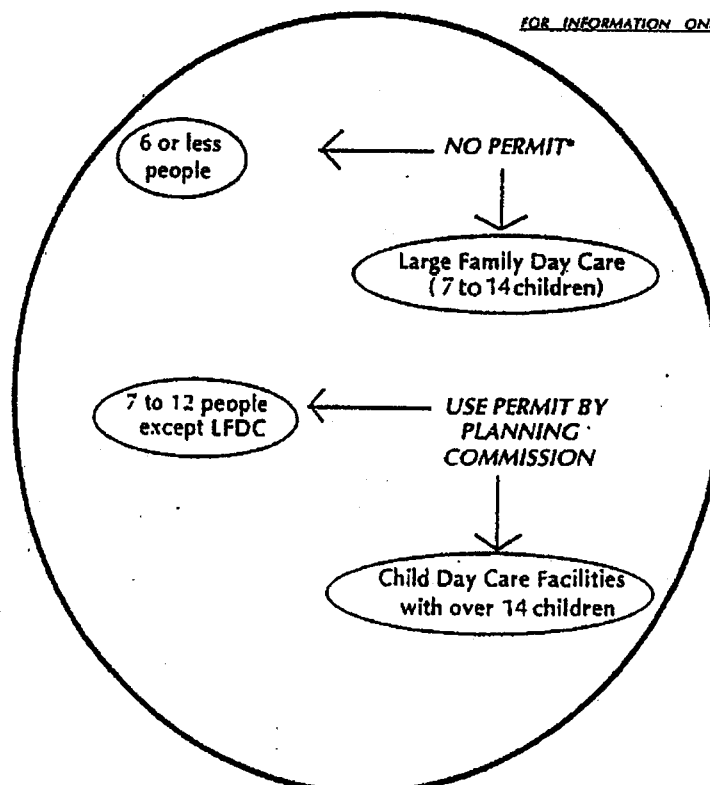
Child day care facilities/day care nurseries serving more than fourteen (14) persons may be permitted in any district, planned community or specific plan area (except in designated airport accident potential zones) where this use is not otherwise identified as a permitted use, subject to the approval of a use permit by the Planning Commission per section 7-9-150.

**Sec. 7-9-141.3. Reserved.**

**COMMUNITY CARE FACILITIES**

Sec. 7 - 9 - 141 - 141.2

FOR INFORMATION ONLY



*\*NOTE: No permit beyond that required for a single-family dwelling.*

**Sec. 7-9-142. Congregate Care Facilities.**

- (a) A congregate care facility serving six (6) or fewer persons shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses and shall be regarded as a single-family dwelling for purposes of zoning and land use regulations.
- (b) A congregate care facility serving seven (7) to twelve (12) persons shall be permitted in any district, planned community, or specific plan area zoned for residential or agricultural uses subject to the issuance of a use permit by the Planning Commission pursuant to section 7-9-150. A congregate care facility shall;
  - (1) Demonstrate compatibility with adjacent development;
  - (2) Provide adequate on site parking for residents and staff;
  - (3) Provide adequate screening of the facility by landscaping and/or fencing; and,
  - (4) Limit signage and lighting.
- (c) A congregate care facility serving more than twelve (12) persons shall be permitted in any district, planned community, or specific plan area zoned for either multifamily residential or hotels subject to the approval of a use permit by the Planning Commission pursuant to section 7-9-150.
- (d) Equivalent dwelling unit counts for congregate care facilities shall be determined by the following table. The consequent unit counts are to be subtracted from the total number of allowed dwelling units for a planned community or specific plan area, and will also determine consistency with area per dwelling unit zoning limitations.

Configuration	Dwelling Unit Counts
2 or more bedrooms in the unit	1 dwelling
1 bedroom in the unit	.5 dwelling
0 bedroom in the unit	.25 dwelling
Medical care rooms	0 dwelling

Density bonuses may be granted to congregate care facilities in residentially-zoned areas in the same manner that they may be granted to standard residential projects per the Housing Element.

***Attachment No. 4***  
*County of Orange*  
*Records Regarding 20172 Redlands Drive*

## Activity Report for Permit Number SI050059

## ACCOUNT

Created: 09/13/2005

Status: CLOSED

Status Updated: 05/06/2008

Status Updated By: Ramon Kimpo

## APPLICANT/FRP

Yellowstone Women's Recovery of California  
1571 Pegasus

Santa Ana, CA 92627

Phone: 949-646-4494

## SITE

Tract: 4307 36 TR Lot(s): null

20172 REDLANDS DR NEWPORT  
BEACH

Permit Description: SI for sober living certification, refer to CE050237, certification to be on an annual basis

Post Date	Type	Work Description	Work Date	Name	Hours	Title (Hourly Rate)	Amount	Balance
09/13/2005	Deposit	Initial Deposit		Yellowstone Women's Recovery of			\$450.00	\$450.00
09/13/2005	Charge	Permit Issuance Charge		Cooke Earl			\$15.00	\$435.00
09/20/2005	Charge	965 Supervisor admin timecharge	09/20/2005	Mike Powell	0.0952	Building Inspector IV (\$143.25)	\$13.64	\$421.36
09/20/2005	Charge	965 ANNUAL FIRE INSPECTION APPROVED. HOUSE SET UP FOR 15 BEDS.	09/20/2005	Don Parker	1.0000	Building Inspector IV (\$143.25)	\$143.25	\$278.11
09/20/2005	Charge	965 Travel timecharge. ANNUAL FIRE INSPECTION APPROVED. HOUSE SET UP FOR 15 BEDS.	09/20/2005	Don Parker	0.1333	Building Inspector IV (\$143.25)	\$19.10	\$259.01
09/20/2005	Charge	965 Admin timecharge. ANNUAL FIRE INSPECTION APPROVED. HOUSE SET UP FOR 15 BEDS.	09/20/2005	Don Parker	0.1500	Building Inspector IV (\$143.25)	\$21.49	\$237.52
11/14/2005	Charge	Initiate SI	09/13/2005	John Powers	0.4667	Staff Specialist (\$105.95)	\$49.45	\$188.07
04/29/2008	Charge	ADMIN Admin timecharge. Review of open permit. This inspection was completed and approved on 9/20/05. Please final and close.	04/29/2008	Don Parker	0.2500	Building Inspector IV (\$154.66)	\$38.67	\$149.40
04/29/2008	Charge	PF Admin timecharge. Close out SI Sober Living Permit	04/29/2008	Allan Metz	0.7333	Administrative Manager II (\$201.26)	\$147.58	\$1.82
05/06/2008	Refund	Automatic Refund Transfer: Request for check forwarded to A/C on 05/06/08		Yellowstone Women's Recovery of California			\$1.82	\$0.00
				Total Hours	2.8285		Balance	\$0.00

Deposits	\$450.00
Charges	\$448.18
Refunds	\$1.82
Adjustments	\$0.00
Balance	\$0.00

## Notes

- O.T. - Overtime  
 E.O.T. - Extraordinary Overtime  
 E.O.T.\* - Extraordinary Overtime (Flat Fee Permit)

***Attachment No. 5***  
***County of Orange***  
***Records Regarding 1571 Pegasus Street***





February 1, 2006

Mr. Martin Angel  
County of Orange Planning & Development

Re: SI 060004-1571 Pegasus, Santa Ana Heights, Ca.

Mr. Angel,

Per Laurie's request I am requesting an SI Permit for a 18 bed sober living home located at 1571 Pegasus, Santa Ana Heights, this is a renewal of SI 1040097.

I have enclosed a copy information application.

Please advise at your earliest convenience when I can pick up permit and schedule inspection.

Thank you,

Leisha Mello  
Administrative Coordinator

(949) 678-0761

2-1-06

**4307-8-4-TR (TRACT): ATTACHED PERMITS**

Legal Description : 4307-8-4-TR (Tract)

Location :

APN : 119-361-14 (Release)  
Effective: Jun 09, 2001

Address : 1571 Pegasus St, Santa Ana (Permanent Bldg Address)

Check All Clear All

Permit No.	Primary	Flag	\$	Status	Owner	Description	Address
<input type="checkbox"/> CE050277	★			Closed		Sober living home, operating without a permit (over 6 people).	1571 Pegasus St, Santa Ana
<input type="checkbox"/> SI030031	★	🚩	\$	Closed-Complete	Yellowstone Women's First Step H	Special Investigation to cover cost of sober living home	1571 Pegasus St Santa Ana
<input type="checkbox"/> SI040097	★		\$	Closed-Complete	Yellowstone Women's Recovery Of	Special Investigation to cover cost of sober living home for Yellowstone Women's Recovery of California	1571 Pegasus St Santa Ana
<input type="checkbox"/> SI060004	★	🚩	\$	Filed	Yellowstone Women's First Step H	Special investigation to cover costs of sober living home for Yellowstone Women's Recovery Center	1571 Pegasus St Santa Ana

***Attachment No. 6***  
***February 20, 2009 Staff Report***

***Attachment No. 7***  
***Correspondence Received after February 20, 2009***

**Brown, Janet**

---

**From:** Jenn Haining [jinnee4@hotmail.com]  
**Sent:** Thursday, March 05, 2009 9:26 AM  
**To:** Brown, Janet  
**Subject:** 1561 Indus Street - Sober Home

Dear Janet,

The sober living home next door to our house habitually leaves their garbage cans out after trash day. Yesterday was our trash pick up and this morning, as of ten to nine when I left for work, their cans were still in front of their house. This is not unusual, as it is common for them to leave them out until late Thursday, or even into Friday. They used to place their cans in front of our house, but as one of our neighbors brought it up at the last city meeting, and after we talked to one of Yellowstone's representatives on 3 different occasions, they are finally placing them in front of their own property.

Can something be done about this?

Thank you for your time,

Jennifer Haining

**Brown, Janet**

---

**From:** Jenn Haining [jinnee4@hotmail.com]  
**Sent:** Monday, March 09, 2009 1:52 PM  
**To:** Brown, Janet  
**Cc:** Contino, Brian; Kiff, Dave; Wolcott, Cathy; Kappeler, John  
**Subject:** RE: Sober Living Homes

Dear Ms. Brown,

Thank you for your quick reply. I know my husband plans on attending the meeting this Thursday. I also wanted to mention that yes, we were aware that 1561 Indus was a sober living home when we purchased our house (although we did not know the other sober living house we share a fence with on Pegasus was, nor were we made aware of the other house on Indus). However, when we found our house and purchased it, 1561 Indus was on the market as well. We anticipated that it would be sold to a family and there would no longer be a business operating next to us. We have nothing against the sober living houses or their occupants, but it is a business operating next to us (though I understand this may be a matter of opinion) and therefore has issues we would rather not have to deal with in a single family residential neighborhood.

Sincerely,  
Jennifer Haining  
1572 Indus Street

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**Subject:** RE: Sober Living Homes  
**Date:** Mon, 9 Mar 2009 13:25:07 -0700  
**From:** [JBrown@city.newport-beach.ca.us](mailto:JBrown@city.newport-beach.ca.us)  
**To:** [jinnee4@hotmail.com](mailto:jinnee4@hotmail.com)  
**CC:** [BContino@city.newport-beach.ca.us](mailto:BContino@city.newport-beach.ca.us); [DKiff@city.newport-beach.ca.us](mailto:DKiff@city.newport-beach.ca.us); [CWolcott@city.newport-beach.ca.us](mailto:CWolcott@city.newport-beach.ca.us); [JKappeler@city.newport-beach.ca.us](mailto:JKappeler@city.newport-beach.ca.us)

Dear Ms. Haining.

Thank you for your e-mail. This information will be made a part of the record for the Yellowstone public hearings. In addition, I have requested the Code Enforcement Officer assigned to this area to look into code violations that may be occurring.

The public hearing for the applications submitted by Yellowstone was continued to this Thursday, March 12, at 4:00 p.m. The meeting will take place in the City Council Chambers (same location as the February 20<sup>th</sup> meeting).

*Janet Johnson Brown*  
*Associate Planner*  
*City of Newport Beach*  
*(949) 644-3236*  
[jbrown@city.newport-beach.ca.us](mailto:jbrown@city.newport-beach.ca.us)

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**From:** Jenn Haining [mailto:jinnee4@hotmail.com]  
**Sent:** Monday, March 09, 2009 1:09 PM  
**To:** Brown, Janet  
**Cc:** Contino, Brian  
**Subject:** Sober Living Homes

Dear Janet,

My husband attended the last city meeting addressing the potential closures of the Yellowstone sober

houses. I am writing to you now because my husband and I became aware at this meeting, of certain policies the occupants of the sober living homes are supposed to be abiding by. We bought our house last April and just moved in December 20, 2008. In the short time we have lived here, it seems that they have been in constant violation of a lot of the policies set forth by the city. As we were unaware of these policies until recently, we have not complained or kept track of their activities.

In the past week or so however, we have been more vigilant about noticing things they may be in violation of. The following are some of these things:

1. I believe it was the weekend before last, I was letting my dog out and could hear someone on the phone at the Pegasus house which backs up to our property. They appeared to be angry and used foul language.
2. Both of these properties frequently have their trash cans out after trash day for up to one to two days.
3. People are frequently coming or going after hours, easily past 11pm. We have heard loud cars racing from the house and one night/early morning someone honking their horn.
4. People appear to be in the house during hours when this is prohibited. I come home for lunch at 2pm and often see people being dropped off and/or picked up.
5. There are often different cars in the driveway that do not appear to be the house mothers.
6. Yesterday, while out tending to my roses in the front yard, I could smell cigarette smoke coming from the 1561 Indus property.

These are just a few of the things we have noted. Not only that, but in reading some of the information they put forth in their applications, it appears as though the attorney was misinformed or not being truthful. The men's house on Redlands, up until recently, was having weekly Tuesday meetings in which it was obvious that a large number of men, that were not occupants, were attending. It brought in quite a bit of car and foot traffic. Also, remembering back to when we were working on our house last summer, girls from the other houses were walking to and from 1561 Indus with towels and bathing suits to use the pool.

I hope this information is helpful to your decision making process. We love our new home and want to have a safe, clean and positive environment to live in.

Sincerely,  
Jennifer Haining  
1572 Indus Street

**1621 INDUS: STAFF REPORT (w/ Attachments 1-6)  
FOR MARCH 12, 2009 HEARING**



## **CITY OF NEWPORT BEACH HEARING OFFICER'S STAFF REPORT**

March 12, 2009  
Agenda Item 3

**TO:** Thomas W. Allen, Hearing Officer

**SUBJECT:** Yellowstone Women's First Step House, Inc. (PA2008-106)  
1621 Indus Street

- Use Permit No. 2008-035
- Reasonable Accommodation No. 2009-05

**APPLICANT:** Yellowstone Women's First Step House, Inc.  
Isaac R. Zfaty, Attorney

**CONTACT:** Janet Johnson Brown, Associate Planner  
(949) 644-3236, [jbrown@city.newport-beach.ca.us](mailto:jbrown@city.newport-beach.ca.us)

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### **PROJECT SUMMARY**

A use permit application to allow the continued operation of an existing unlicensed adult residential care facility providing a sober living environment with a total occupancy of 17 persons. This application has been filed in accordance with Ordinance No. 2008-05, which was adopted by the City Council in January 2008. A reasonable accommodation application has also been submitted requesting:

1. The residents of the facility be treated as a single housekeeping unit as defined in Section 20.03.030 the Newport Beach Municipal Code (NBMC);
2. An exemption from the occupancy restrictions of NBMC Section 20.91A.050, which restricts occupancy to two residents per bedroom plus one additional resident; and
3. An exemption from NBMC Section 20.90.030 that states applications for discretionary approvals, including use permits, are accompanied by a fee as established by resolution of the City Council.

### **RECOMMENDATION**

Staff recommends that the Hearing Officer reopen the public hearing, receive testimony from the applicant, the City of Newport Beach and its legal counsel, and members of the public. At the conclusion of the public hearing, staff recommends the Hearing Officer:

1. Deny the use permit application based on the findings discussed in the February 20, 2009, staff report (Attachment 5), and based on new information provided in this report, and provide direction to staff to prepare a resolution of denial with prejudice of Use Permit No. 2008-035.
2. Deny the request for reasonable accommodation for the residents of the facility to be treated as a single housekeeping unit based on the information discussed in this staff report.
3. If the Hearing Officer decides to grant a use permit for this facility, staff recommends that the requested accommodation for an exemption from the occupancy restrictions of NBMC Section 20.91A.050 be granted as to the current residents. As to future residents of this facility, staff recommends denial of the requested accommodation based on the information discussed in this staff report.
4. Deny the request for reasonable accommodation for an exemption of the application filing fee requirement based on the information discussed in this staff report.

## **INTRODUCTION**

On February 20, 2009, the Hearing Officer conducted the public hearing for Use Permit No. 2008-035, taking testimony from staff, the applicant and members of the public. At the conclusion of the hearing, the Hearing Officer concurred with staff's recommendation to approve the use permit with a reduced occupancy subject to the findings in the staff report (Attachment 5), and directed staff to prepare a resolution for approval of Use Permit No. 2008-035. The hearing was continued to March 12, 2009, to take action on the application for Reasonable Accommodation No. 2009-05.

Following testimony by the applicant at the February 20 hearing which characterized the existing sober living use as an established nonconforming use of the property, staff conducted further investigation into the circumstances and laws applicable at the time the facility was established while under the jurisdiction of the County of Orange. Based on information provided by the County, staff believes not all of the findings required to approve the use permit can be made. Therefore, staff recommends the Hearing Officer reopen the hearing as to whether a use permit at this location should be granted, reconsider the decision to approve the use permit, and deny Use Permit No. 2008-035 for the reasons stated below.

## **BACKGROUND**

The subject property is located in an area referred to as West Santa Ana Heights, which was annexed into the City of Newport Beach effective January 1, 2008. Prior to annexation, West Santa Ana Heights was an unincorporated area under the jurisdiction